The Economic System of Islam

Taqiuddin an-Nabhani

Hizb ut-Tahrir

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Al-Khilafah Publications
Suite 298
56 Gloucester Road
London SW7 4UB
e-mail: info@khilafah.com
website: http://www.khilafah.com

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Translation of the Qur'an

It should be perfectly clear that the Qur'an is only authentic in its original language, Arabic. Since perfect translation of the Qur'an is impossible, we have used the translation of the meaning of the Qur'an' throughout the book, as the result is only a crude meaning of the Arabic text.

Qur'anic *Ayat* and transliterated words have been *italicised.*

Ahadith appear in **bold**

سبحانه وتعالى - subhanahu wa ta'ala
ﷺ - sallallahu 'alaihi wa sallam
ra - radhi allaho anha/anho
AH - After Hijrah
CE - Christian Era

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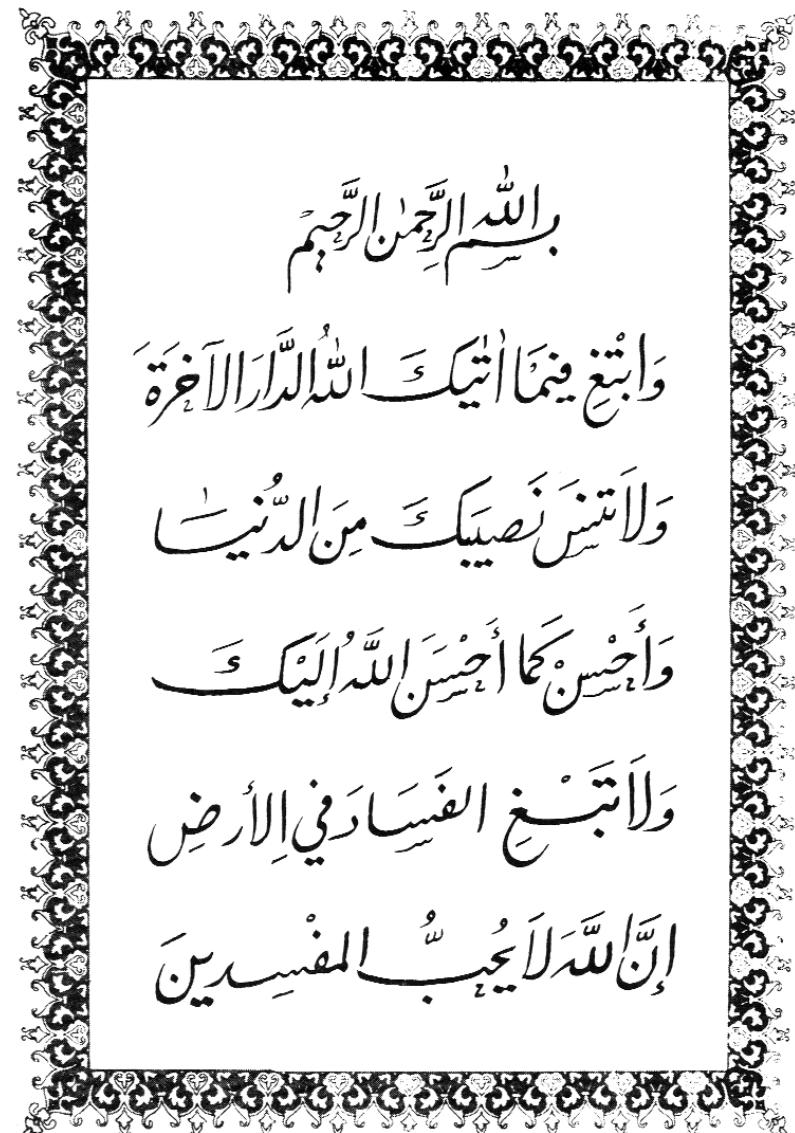
"But seek the abode of the Hereafter in that which Allah has given you, and do not neglect your portion of worldly life, and be kind even as Allah has been kind to you, and seek not corruption in the earth. Verily, Allah likes not the Musfsidun (those who are mischief-makers, corrupted)."

[Al-Qasas: 77]

Contents

Introduction

This book of the economic system in Islam is a precious intellectual Islamic fortune, rarely matched. It is the first book which crystallises, clearly and obviously, in this century, the reality of the economic system of Islam in this period in an explicit fashion.

It explains the Islamic view of the economy and its objective, how to own property and increase it, how to spend and dispose of it, how to distribute the wealth amongst the citizens in society and how to establish a balance within it.

It explains the types of properties (private, public and State property) including the property due to the *Bait ul-Mal* and the areas over which it is spent.

It explains the rules of lands, whether *'Ushriyya* or *Kharajiyya*, and what is obliged in them of the tithe (*'Ushr*) or land tax (*Kharaj*) and how to utilise, cultivate and allocate and also how to transfer them from one owner to another.

It also discusses the different types of currencies (*Nuqud*) and what occurs in them of *Riba*, exchange and what is obliged from them of *Zakat*.

Finally it discusses the foreign trade and its rules. The sole sources in adopting the rules mentioned in this book are the Book of Allah and the Sunnah of His Messenger ﷺ and what they directed to, namely analogy and *Ijma'a as-Sahabah*. No other source is taken in adopting these economic rules.

The book introduces the reality of the capitalist and socialist, including

(communist) economic systems and their refutation, explaining their defects and contradiction with the economic system of Islam.

This book was reviewed prior to printing the new edition with only minor corrections. Careful attention was spent in reviewing all the *Ahadith* mentioned which were proven according to their narrators in the books of *Hadith*.

This book, to its credit, has created amongst Muslims a great awareness of the Economic System in Islam. We ask Allah that He ﷻ spreads its favour and enables Muslims to place its rules into action in a State ruling them exclusively with that which Allah ﷻ has revealed.

23rd Safar 1410 Hijra
23/9/89

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Introduction to the Economic System

Thoughts, in any nation, are the greatest fortune the nation gains in her life if the nation is newly born; and they are the greatest gift that any generation can receive from the preceding generation, provided the nation is deep-rooted in the enlightened thought.

With regard to material wealth, scientific discoveries, industrial inventions and the like, all of these are of much lower importance than thoughts. In fact, to gain such matters depends on the thoughts, and preservation of these matters depends on the thoughts as well.

If the material wealth of a nation is destroyed, it is possible for it to be restored quickly as long as the nation preserves its intellectual wealth. However, if the intellectual wealth collapses and the nation retains only its materialistic wealth, this wealth will soon shrink and the nation will fall down into poverty. Most of the scientific achievements which the nation once made can be regained, provided it does not lose its way of thinking. Whereas, if it lost the productive way of thinking, it would soon regress and lose its discoveries and inventions. Therefore, it is necessary to take care of the thoughts first. Based upon these thoughts, and according to the productive way of thinking, material wealth is gained, and the achievement of scientific discoveries, industrial inventions and the like is sought.

What is meant by thoughts is the existence, within the nation, of the process of thinking in it's life affairs, such that the majority of its individuals use the information that they have when facing events, so as to judge on them. This means that they have thoughts which they contrive to use in life, and by using these thoughts frequently and successfully, a productive way of thinking results.

Today, the Islamic *Ummah* is lacking in thoughts, so it is naturally deprived of the productive way of thinking. The present generation did not receive from its preceding generation any ideas, be they Islamic or non-Islamic and naturally; it did not receive a productive way of thinking. Nor did it attain by itself any thoughts or a productive way of thinking. As a result, it is natural for this generation to be seen in poverty, despite the abundance of material resources in its lands. Likewise, it is natural to have no scientific discoveries and industrial inventions even though it studies the theories of these discoveries and inventions and is aware of them. This is because it is impossible to rush to gain them in a productive way, unless it possesses a productive way of thinking i.e. unless it has thoughts and it is creative in using their thoughts in life. Therefore, it is inevitable for the Muslims to establish for themselves thoughts and a productive way of thinking. Thereafter, they will be able to proceed, based on that, to acquire material wealth, make scientific discoveries, and industrial inventions. Unless they do this, they will not proceed a single step; rather they will continue to go around in a vicious circle, exhausting their mental and physical efforts, only to end up exactly where they began.

The present generation of Muslims has not even adopted a basic thought which contradicts their ideology of Islam, which we aim to establish amongst them. If it had done so, it would have been able to fully comprehend the Islamic ideology given to it, because this comprehension would have resulted from a clash between the Islamic ideology and the one carried by this generation, making the *Ummah* realise the correctness of the Islamic ideology. Rather, the current Islamic generation is empty of any thought and of any productive way of thinking. Instead, it inherited the Islamic thoughts as an academic philosophy, in the same way that the Greeks inherited the philosophies of Aristotle and Plato. It also inherited Islam as rituals and religious dogma, in the same way the Christians inherited Christianity. At the same time, it became fascinated with Capitalism after witnessing its successes, and not through comprehending the validity of its thoughts; and from its submission to its rules, and not from comprehending how these solutions emanate from the Capitalist viewpoint of life. Therefore, the *Ummah* is devoid of the Capitalist thoughts intellectually, although it lives according to the Capitalist way of life. The *Ummah* also became devoid of the Islamic thoughts in practice, although it conducts some of its rituals and studies its thoughts.

The tendency of this generation towards the Capitalist ideas went far beyond just reconciling Islam with the Capitalist laws and solutions. It has now reached such an extent that there is a feeling of Islam being incapable of solving contemporary problems of life, and there is an urge to take Western laws as they are, without even reconciling them with Islam. The *Ummah* came to see no harm in giving up Islamic rules and adopting others, in order to progress with the civilised world, and catch up with the Capitalist and Socialist nations, considering them as progressed peoples. As for those who adhere to Islam, they have the same tendency towards the Capitalist thoughts, but they still try to reconcile them with Islam. However, those who try to reconcile Islam with other thoughts have no influence in life, nor do they have any presence in society, i.e. in the actual relationships that go on between the people.

Therefore, the delivery of the Islamic thoughts and rules which solve problems of life, collides with minds, empty of thought and a way of thinking. Instead it clashes with inclinations, from all the people, towards the Capitalist and Socialist thoughts, and with the way of life currently governed by Capitalism. So unless the given thought is strong enough to cause a shake-up in the hearts and minds, it will be impossible to move the people, nor even attract their attention to it. This thought has to push the dull shallow minds to think deeply, and it has to shake off the deviated inclinations and the sick tastes, so as to establish the sound inclination towards the Islamic thoughts and rules.

Consequently, it is necessary for the carrier of the Islamic Da'wah to expose the foundation upon which the Capitalist solutions are established, illustrate their falsehood and destroy them intellectually. He has to address the various new issues of life and show the Islamic solutions to these issues as divine rules which must be followed, because they are rules derived from the Qur'an and *Sunnah*, or from what these two evidences have directed to, and not from the perspective of whether or not they are suitable for this time. That means they have to be taken based on the Aqeedah and not based on their perceived benefit. So each rule has to be given along with the divine evidence from which it was derived, or by explaining the divine reason (*Illah*) which the rule or the text brought.

The thoughts related to the ruling system and economics are the

thoughts which most fascinated the Muslims, and made them suffer the severest tribulations in their lives. The Muslims generally admired these thoughts, and the West tries to practically apply these thoughts, and persists in its endeavours to implement them. Although the *Ummah* is theoretically governed by democracy on purpose by the infidel colonialists, in order to protect the Western system and colonisation, she is governed practically by the Capitalist economic system in all the economic aspects of life. Therefore, the Islamic economic thoughts are those which will have the greatest influence in the economic life of the Islamic world, so much so that they will turn it upside down and they will be most opposed by the agents of the infidel colonialist, and those who are fascinated by the West, namely those who are pleased to live in the darkness, the defeatists and the rulers.

Therefore, it is necessary to give a clear picture of the Capitalist economic system, which classifies the basic thoughts upon which the political economy in the West is established, so that those who have become fascinated with the Western economic system can come to see the corruption of this system and its contradiction with Islam. They will then examine the Islamic economic thoughts which address the problems of economic life in the correct manner, and present them as a unique way of life which contradicts the Capitalist life in both its general principles and in its details.

The Capitalist Economic System

If we examine the Capitalist economic system we find that, in their view, it deals with man's needs and the means of satisfying those needs. It only addresses the materialistic side of man's life and it is established on three principles:

1. There is a relative scarcity of commodities and services in relation to needs. This means the insufficiency of commodities and services to meet the ever-increasing needs of man. This is the society's economic problem from their viewpoint.

2. The value of a product which is the basis of most economic research and study.

3. The price, and its role in production, consumption, and distribution. The price is the cornerstone of the Capitalist economic system.

With regard to the relative scarcity of commodities and services, this situation exists because the commodities and services are the means which are used to satisfy man's needs. They say man has needs that require satisfaction, so there must exist the means to satisfy them. These needs are purely materialistic; they are either tangible, such as the need for food and clothing, or they are needs which are sensed by man but are intangible, such as the need for the services of, for example, doctors and teachers. As for the moral needs such as pride and honour, or spiritual needs such as the sanctification of the Creator, they are not recognised economically, and are therefore disregarded and have no place in economic studies.

The means of satisfaction are called commodities and services. Commodities are the means of satisfying the tangible needs, whereas services are the means of satisfying the intangible needs. What makes commodities and services satisfy the needs, in their viewpoint, is the benefit in these commodities and services. This benefit is an attribute which renders the thing desirable for satisfying a need. Since the need means the economic desire, then the economically beneficial thing is everything desired, whether it is essential or not, and even if some consider it beneficial and others consider it harmful. It is considered economically beneficial as long as there is someone who finds it desirable. This makes them consider things as beneficial from an economic viewpoint even if the public opinion considers them of no benefit, or harmful. Thus wine and hashish are beneficial things to the economists since there are people who want them.

The economist looks upon the means of satisfaction, that is, the commodities and services, from the viewpoint that they satisfy a need, without taking any other factor into consideration. Thus, he looks at the needs and the benefits as they are, not as they should be i.e. he looks at benefit as satisfying a need, without taking anything else into consideration. So he would look at wine in its capacity of having an economic value because it satisfies the needs of some people, and he perceives the wine maker as a person who provides a service, considering this service as having an economic value, because it satisfies the need of

some individuals.

This is the nature of needs in Capitalism and the nature of the means of satisfying these needs. Hence, the economist does not care about the nature of society, but cares about the economic material resources (economic commodities), since they satisfy a need. Therefore, the function of the economist is to supply commodities and services i.e. to provide the means of satisfying man's needs, irrespective of any other consideration. Accordingly, the economist strives to make available the means of satisfaction. Since the commodities and services, which are the means of satisfaction are limited, they are not sufficient to meet all of man's needs, because these needs in their view are unlimited and constantly growing. This is because there are basic needs which man as a human must satisfy, and there are needs which increase in number as man proceeds to a higher level of urbanisation. These needs multiply and increase and they all need complete satisfaction, a situation which cannot be fulfilled no matter how much commodities and services increase. From here the basis of the economic problem emerged, which is an overabundance of needs and the shortage of the means of their satisfaction i.e. the lack of commodities and services to completely satisfy all of man's needs.

From this perspective, the society faces an economic problem, which is the relative shortage of commodities and services. The inevitable result of this shortage is that some needs are either partially satisfied or not satisfied at all. Since this is the situation, it is necessary that the members of society agree on rules that decide which needs have to be satisfied and which needs are to be deprived. In other words, it is necessary to set a rule that decides the manner of distributing the limited resources over the unlimited needs. So the problem to address in their view is the needs and resources and not the man. Thus, the problem is to make available the resources so as to satisfy the needs, but not necessarily the needs of every individual. Therefore, it is necessary that the rules which are laid down, be rules which guarantee the achievement of the highest possible level of production, so as to achieve the highest supply of resources i.e. to supply the goods and services to the nation as a whole, but not necessarily to each individual. Therefore, the problem of distributing the goods and services is closely connected to the problem of production, and the objective of economic studies and research is to increase the goods and services which are consumed by the society. It is not surprising

therefore, that the study of the factors which affect the size of the national production (GDP and GNP) takes precedence over all economic studies. Because the study of increasing the national production is one of the most important studies to solve the economic problem, that is the scarcity of the commodities and services in relation to the needs. For they believe that poverty and deprivation cannot be solved except by increasing production. Therefore, solving the economic problem facing society is only by increasing production.

The value of the product means its degree of importance, whether relative to a particular person or relative to another thing. In the first case, it is called 'the value of the benefit'. In the second case, it is called the 'value of exchange'. The value of the benefit of a thing can be summarised as: the value of benefit of any unit of a thing is evaluated by its marginal benefit i.e. by the benefit of the unit that satisfies the weakest need. They called this 'The Theory of Marginal Utility'. This means that the benefit is not evaluated according to the viewpoint of the producer alone i.e. evaluated by the costs of its production, since this would mean consideration of supply without demand. Nor is it evaluated from the viewpoint of the consumer alone i.e. evaluated by its benefit and desirability, as well as looking at its relative shortage, because this would mean the consideration of demand without supply. In fact, they claim that benefit should be observed from the viewpoint of supply and demand together. Thus the benefit of a thing is assessed at the last point that satisfies the need i.e. at the minimum point of satisfaction. Therefore, the value of a loaf of bread is assessed at the minimum point of hunger not at its maximum, and at a time when there is an availability of bread in the market, not at a time when there is a shortage.

As for the value of exchange, it is an attribute which makes a thing suitable for exchange. The strength of exchange of a thing is measured relative to another, so the value of exchange of wheat relative to corn is estimated by the units of corn which should be conceded to obtain a unit of wheat. They refer to the value of the benefit using the term 'benefit' only, and refer to the value of exchange using the term 'value' only.

Exchange occurs between two commodities or services which are similar or close in their values. Hence, the study of value was necessary

for economists; because it is the basis of exchange, and it is a utility which can be measured; it is a scale with which the commodities and services are measured and by which actions are judged as productive or not.

Production, in their view, is creating a benefit or increasing it, which is accomplished by work. So, to identify works as being productive or not, and to know which are of greater productivity, there must be an accurate scale for the various products and services. This scale is the societal value of the various products and services. In other words, it is the collective evaluation of the work spent and the service provided. Such an evaluation became necessary, because in the modern time, production for the purpose of exchange has replaced production for consumption. The situation now arises whereby virtually every person exchanges his production with other people's production. The exchange is achieved by the existence of compensation for the commodity or service, so there must be an estimation of the value of the commodity in order that it can be exchanged. Hence, knowledge of the value in terms of what it is, is an essential factor in production and consumption i.e. an essential factor towards satisfying man's needs, by using these means.

In modern history, this value of exchange has been identified by one of its values, and this type of value has become predominant. In developed communities, the values of commodities are not related to each other but are related to a certain commodity called money. The exchange ratio of a commodity or a service with money is called its price. The price therefore, is the amount of exchange of a commodity or a service relative to money. Hence, the difference between the value of exchange and the price is that the value of exchange is the ratio of an exchange of one thing with another, whether that thing is money, commodities, or services; while the price is the exchange value of a thing with money. This means that it is possible that the prices of all goods rise at any one time, and all fall at any one time, whilst it is impossible that the exchange values of all commodities relative to each other rise or drop at any one time. It is also possible for prices of commodities to change without resulting in a change in their value of exchange. Therefore, the price of a commodity is one of its values; in other words it is the value of a commodity relative to money only. Since the price is one of the values, it is natural for price to be taken as a scale for deciding whether a thing is beneficial or not, and the degree of benefit of that thing.

Therefore, the commodity or the service is considered as productive or beneficial if the society evaluates this particular commodity or service by a particular price. The degree of benefit of this commodity or service is measured by the price which the majority of the consumers agree to pay for possessing or utilising it, whether this commodity is an agricultural or industrial product, and whether the service is that of a trader, transportation company, doctor, or engineer.

As for the role which the price plays in production, consumption, and distribution, it is the price mechanism that decides which of the producers will enter the production race and which will be excluded. In the same manner, price decides which of the consumers will satisfy their needs and which consumers will not be able to do so. The production cost of a commodity is the principal factor which governs its supply in the market, while the benefit of the commodity is the principal factor which governs the demand in the market for it, and both are measured by the price. Therefore, the study of supply and demand is the fundamental issue in the Capitalist economy. What is meant by the supply is the supply of the market, and what is meant by demand is the demand of the market. As demand cannot be defined without mentioning the price, supply too cannot be evaluated without the price. However, demand changes inversely proportional to the change in price i.e. if price increases, demand decreases, and if price decreases then demand increases. This is contrary to supply which changes directly proportional to the price i.e. the level of supply increases as the price increases and it drops as price decreases. In both cases, price has the greatest effect upon supply and demand, that is, it has the greatest effect upon production and consumption.

The price mechanism in the view of the Capitalists is the ideal method of distribution of commodities and services amongst individuals in society, since the benefits are the result of the efforts which man expends. So, unless the compensation is equal to the effort, then, no doubt, the level of production will drop. Therefore, the ideal method to distribute commodities and services in a society is that which guarantees the highest possible level of production. This method is the price method which is also called the price system or the price mechanism. They consider that the price mechanism produces economic equilibrium automatically, since it gives the consumers the choice to decide for themselves the distribution

of the resources owned by the society over the various economic activities, through the consumers demand for some commodities and their turning away from others. Hence they spend their income by buying what they need or what they like. Thus, the consumer who dislikes wine will abstain from buying it and spends his income on other things. If the number of consumers who dislike wine increased, or if all came to dislike it, then the production of wine becomes unprofitable due to decreasing demand. Thus, production of wine would stop naturally, and the same rule applies to other commodities and services. The consumers themselves define the level and kind of production by being left free to decide what to buy and what to leave. Via the price itself, the distribution of commodities and services occurs whether or not the price is available to the producers, and whether or not they give it to the producers.

The price mechanism is the incentive for production, it is the regulator of distribution, and the link between the producer and the consumer i.e. it is the means which achieves equilibrium between production and consumption.

The price mechanism is the incentive for production, because the principal motive for man to undertake any productive effort or sacrifice is his material reward. The Capitalist economists exclude the possibility that man expends effort for a moral or spiritual motive. The moral motive, when they do recognise it, is attributed to a materialist compensation. They consider that man expends his efforts to satisfy his materialistic needs and wishes only. This satisfaction is either through the consumption of commodities which he produces directly, or through receiving a monetary reward that enables him to obtain the commodities and services produced by others. Since man depends in satisfying most of his needs, if not all of them, on exchanging his efforts with others, then the satisfaction of needs is focused on obtaining a monetary reward for his efforts. This monetary reward allows him to obtain commodities and services, and accordingly he is not focused on obtaining the commodities which he produces. Therefore, the monetary reward, which is the price, is the motive for man to produce. Hence, the price is the means which motivates the producers to offer their efforts. Thus the price is the incentive for production.

The price is the means which regulates distribution, because man likes to satisfy all of his needs completely and he strives to obtain the

commodities and services which satisfy these needs. Had every human being been left free to satisfy his needs he would not stop short of possessing and consuming whatever commodity he likes. Since every man strives for this same aim, everybody has to stop in satisfying his needs at the limit at which he can afford to exchange his efforts with others efforts, that is at the limit of the monetary compensation which he receives for expending his effort i.e. at the limit of the price. Therefore, the price is the constraint which acts naturally to restrict man in his possession and consumption to a level which is proportional to his income. So the existence of the price makes man think, evaluate, and differentiate between his competing needs which require satisfaction, and he takes what he finds necessary, and leaves what he finds of less importance. Thus, the price forces the individual to settle for partial satisfaction of some of his needs, so as to be able to satisfy the other needs which he considers no less important.

So, the price is the tool which regulates the distribution of utilities required by individuals. The price also regulates the distribution of limited utilities amongst the consumers who demand these utilities. The disparity in income of the consumers makes the consumption of each individual confined to that which his income allows. This makes some commodities confined to only those who can afford them, while the consumption of other commodities would become common amongst people who can afford the lower prices. Therefore, the price will become the regulator in distributing utilities amongst consumers by setting a high price for some commodities and services and a low price for others, and also by the suitability of the price to some consumers more than others.

The price achieves equilibrium between production and consumption, and it is the link between the producer and the consumer, because the producer who fulfils the desires of the consumers is rewarded through profits. On the other hand, the producer whose products are not accepted by the consumers, would end up with losses. The method through which the producer can detect the desires of the consumers is the price. If the consumers demand any particular commodity its price will increase, and the production of that commodity will increase, in fulfilment of the consumer's desires. If consumers turn away from buying a particular commodity, its price will drop in the market, and so production of this commodity will decrease. So, the resources assigned to production

increase as the price increases, and decrease as the price decreases. In this way the price is the tool which achieves equilibrium between production and consumption, and it is the link between the producer and the consumer, and this process occurs automatically. Therefore, the price is the basis on which the economy is established in the view of the Capitalists, and it is the cornerstone of the economy to them.

This is a summary of the economic system in Capitalism, which is called the political economy. By studying it thoroughly, the falsehood of the Capitalist economic system can be shown from many aspects:

1. Mixing the Needs and the Means of Satisfaction

Economy in Capitalism means to address man's needs and the means of their satisfaction. Hence the production of commodities and services, which are the means of satisfying the needs, together with the distribution of these commodities and services are considered in their view, one subject. The needs and the means of their satisfaction are considered to be interrelated such that they are one subject, inseparable from each other, as if one of them is included within the other. So, the distribution of commodities and services is included in the subject of the production of these commodities and services. Thereupon, they look at the economy from one angle which includes the economic commodities and the method of their possession, without separation between them and without differentiating one of them from the other. Thus, they hold one view towards the economic science and the economic system without differentiating between them. However, there is a difference between the economic system and economic science.

The Economic System versus Economic Science

The economic system is that which determines how to distribute the wealth, how to possess it, and how to spend or dispose of it. This determination follows a particular viewpoint in life, or ideology. Therefore, the economic system in Islam is different from that of Socialism/Communism and that of Capitalism, since each of these systems follows its own ideological viewpoint of life. Economic science discusses production, its improvement, invention and improvement of its means. Economic science, as is the case with other sciences, is universal to all nations and is not associated with a particular ideology. So for example, the view towards ownership in Capitalism differs from that of Socialism/Communism, and differs from that in Islam. However, discussing the improvement of production is a technical issue, which is purely scientific, and the same for all people, no matter what their viewpoint about life is.

This merger between the study of the needs and the means of their satisfaction i.e. between producing the economic material and the manner of its distribution, and bringing them as one issue and one subject, is an error, which resulted in mixing and interference in the capitalists studies of economy. As a result the basis of the Capitalist economy is wrong.

2. Needs are only Materialistic

The reference to the needs which require satisfaction as being purely materialistic is an error, and contradictory to the reality of needs. In addition to material needs there are moral and spiritual needs, each requiring satisfaction, and each requiring commodities and services for their satisfaction.

3. Commodities and Services are not related to the structure of the society

The Capitalist economists look to the needs and benefits as they are, not as the society should be, which means that they look at man as a purely materialistic creature, empty of spiritual needs, ethical thoughts, and moral objectives. Similarly they do not care about how the society should be structured in terms of moral elevation, by making the virtues the basis for society's relationships or what should prevail in the society by way of spiritual elevation i.e. making the realisation of man's relationship with Allah (realising the existence of Allah) the driving force behind all relationships, for the sake of attaining the pleasure of Allah. The Capitalist economist would not care for this since his interest is purely material in terms of what satisfies the materialistic needs. So, if man does not cheat in selling it is because he believes his trade will profit,

while if he were to profit by cheating, then cheating would be legal for him. He does not feed poor people in response to the order from God for him to give charity, rather he feeds them so that they do not steal from him. If, however, their starvation increases his wealth then he would leave them to starve. Thus, the main concern of the Capitalist is to look for the benefit which satisfies a materialistic need only. The individual that looks at others based on his own benefit, and establishes economic life on this basis, is the most dangerous person to society and people.

This is from the aspect of needs and benefits. From the aspect of resources and efforts, which are called commodities and services, the individual strives for them to obtain them, so as to gain benefit from them. The exchange of resources and efforts among people creates relationships among them, according to which the structure of the society is formed. So it is necessary to look at what the structure of the society should be, both in general and in detail, when evaluating the resources and the efforts.

So caring for the economic commodity with respect to its fulfilling a need, without caring for what the society should be, is a detachment of the economic commodity from the relationship, which is unnatural. This economic commodity is exchanged among the people thereby creating relationships among them, and the relationships form the society, so the effect on society should be perceived when considering the economic commodity. Therefore, it is incorrect to consider a thing as beneficial just because there is somebody who likes it, whether it is itself harmful or not, and whether it affects the relationships among people or not, and whether it is prohibited or permitted in the belief of the people in the society. Rather things should be considered beneficial if they are really beneficial in respect of what the society should be. Therefore, it is incorrect to consider cannabis, opium and the like as beneficial commodities and to consider them economic commodities just because there is somebody who wants them. Instead, the effect of these economic commodies on the relationships between people in society must be considered when considering the benefit of things i.e. when considering the thing as an economic commodity or not. Things should be viewed in relation to what the society should be. It is wrong to look at a thing merely as it is, regardless of what the society should be.

By including the subject of satisfying the needs within the subject of the means of satisfying needs, and by viewing the means of satisfaction only as satisfying a need, and not by any other consideration, economists concentrate on production of wealth more than distribution of wealth. The importance of distribution of wealth to satisfy the needs has become secondary. Therefore, the capitalist economic system has one aim, which is to increase the country's wealth as a whole, and it works to arrive at the highest possible level of production. It considers that the achievement of the highest possible level of welfare for the members of society will come as a result of increasing the national income by raising the level of production in the country, and in enabling individuals to take the wealth, as they are left free to work in producing and possessing it. So the economy does not exist to satisfy the needs of the individuals and to facilitate the satisfaction of every individual in the community, rather it is focused on the augmentation of what satisfies the needs of the individuals i.e. it is focused on satisfying the needs of the community by raising the level of production and increasing the national income of the country. Through the availability of the national income, the distribution of income among the members of society occurs, by means of freedom of possession and freedom of work. So it is left to the individuals to obtain what they can of the wealth, everyone according to what he has of its productive factors, whether all the individuals or only some individuals are satisfied.

This is the political economy i.e. the capitalist economy. This is manifestly wrong, and contradicts reality; it does not lead to an improvement in the level of livelihood for all individuals, and does not fulfil the basic welfare of every individual. The erroneous aspect in this view is that the needs which require satisfaction are individual needs, they are needs of a man; so they are needs for Muhammad, Salih and Hasan and not needs for a group of human beings, a group of nations, or a group of people. The one who strives to satisfy his needs is the individual, whether he satisfies them directly such as eating, or he satisfies them through the satisfaction of the whole group such as the defence of the nation. Therefore, the economic problem is focused on distributing the means of satisfaction for individuals i.e. the distribution of the funds and benefits to the members of the nation or people, not on the needs which the nation or the people require without regard to every individual within the nation. In other words, the problem is the poverty which

befalls the individual not the poverty which befalls the nation. The concern of the economic system must only be in satisfying the basic needs of every individual, not the study of producing economic commodity.

Consequently, the study of the factors that affect the size of national production differs from the study for satisfying all the basic needs of all individuals personally and completely. The subject of study must be the basic human needs of man, as a human being, and the study of distributing the wealth to the members of society to guarantee the satisfaction of all their basic needs. This should be the subject of study, and should be undertaken in the first place. Moreover, the treatment of the poverty of a country does not solve the problem of poverty for individuals, individually. Rather, the treatment of the poverty problems of the individuals, and the distribution of the wealth of the country among them, motivates all the people of the country to work in increasing the national income. The study of factors that affect the size of production and the increase of the national income, should be discussed as economic science, that is, in the discussion of the economic commodity and its increase, rather than in the discussion of satisfying the needs, which are regulated by the economic system.

The Capitalists claim that the economic problem which faces any society is the scarcity of commodities and services. They also claim that the steadily increasing needs, and the inability to satisfy all of them i.e. the insufficiency of commodities and services to satisfy all of man's needs completely, is the basis of the economic problem. This view is erroneous and in fact contradicts with reality. This is because the needs which must be met are the basic needs of the individual as a human (food, shelter and clothing), and not the luxuries, although they too are sought. The basic needs of humans are limited, and the resources and the efforts which they call the commodities and services existent in the world are certainly sufficient to satisfy the basic human needs; it is possible to satisfy all of the basic needs of mankind completely. So, there is no problem in the basic needs, quite apart from considering it the economic problem that faces society. The economic problem is, in reality, the distribution of these resources and efforts enabling every individual to satisfy all basic needs completely, and after that helping them to strive for attaining their luxuries.

With reference to the steadily increasing needs, it is not a subject related to increasing basic needs, because the basic needs of man as a human do not increase, whereas, it is his luxuries which increase and vary. The increase in needs which occurs due to the progress of a human in his urbanised life is related to the luxuries rather than to the basic needs. Man works to satisfy his luxuries, but their non-satisfaction does not cause a problem; what does cause a problem is the non-satisfaction of the basic needs. Besides all of this, the question of the increasing luxuries is a question which is only related to some people who live in a certain country and not to all individuals of that country. This question is solved through the natural urge of a human to satisfy his needs. This urge, resulting from the increase in luxuries, drives man to work towards satisfying them, either by expanding the resources of his country, working in other countries, or through expansion and annexation of other countries. This is different from the issue of completely satisfying the basic needs of each and every individual in society. This is because the problem of distributing the wealth to each and every individual to satisfy his basic needs, and enabling every individual to satisfy his luxuries, is a problem related to the viewpoint in life, which is particular to a certain nation carrying a particular ideology. This is contrary to the question of increasing national income through increasing production, which is related to the situation of particular countries, and could be achieved through utilising the resources of the country, emigration, expansion, or merging with other countries. This issue of increasing wealth depends on the practicality of the solution, and is not related to a particular viewpoint, and not related to a particular nation or ideology.

The economic principles which have to be laid down are the principles which guarantee the distribution of the country's internal and external wealth to each and every individual of the nation, so that they secure the complete satisfaction of all basic needs for each individual, and then enable every individual to seek the satisfaction of the luxuries. However, raising the level of production requires scientific research, and its discussion in the economic system does not solve the economic problem, which is the complete satisfaction of the needs of each and every individual. An increase in the level of production leads to a rise in the level of the wealth of the country but does not necessarily lead to the complete satisfaction of all the basic needs of each and every individual. The country could be rich in natural resources, as in the case of Iraq

and Saudi Arabia, but the basic needs of most of their citizens are not satisfied completely. Therefore, the increase of production by itself, does not solve the basic problem which must be treated first and foremost, which is the complete satisfaction of the basic needs of each and every individual, and following that enabling them to satisfy their luxuries. Therefore, the poverty and deprivation required to be treated is the non-satisfaction of the basic needs of man as a human being (i.e. food, shelter and clothing), not the increasing luxuries resulting from urban progress. Hence, the problem to be treated is the poverty and deprivation of every individual in the society, not the poverty and deprivation of the country measured as a whole. The poverty and deprivation from this perspective (i.e. for every individual) is not treated by increasing national production, rather it is treated by the manner in which the wealth is distributed to the individuals in society enabling complete satisfaction of all their basic needs, and then enabling the individuals to satisfy their luxuries.

Capitalism considers value as being relative and not real, and so it is treated as a subjective measurement. Hence, the value of a yard of cloth is the marginal benefit of it assuming its availability in the market. Its value is also the quantity of commodities and efforts that could be exchanged for it. The value becomes a price if what is obtained for the yard of cloth is money. These two values, in their view, are separate, and they have two distinct names; benefit and the value of exchange. The meaning of value according to this definition is wrong, because the value of any commodity is the quantity of benefit in it, taking into account the element of scarcity. So the real view towards any commodity is to observe its benefit whilst taking into account its scarcity, whether it is possessed by man from the start like from hunting, or by exchange like selling; and whether this was related to the person or related to the thing. Thus, value is a name for a designated thing which has a specific reality, and not a name for a relative thing, which applies to it in one respect and is not applicable in another. So the value is an objective measurement and not a relative thing. Therefore, the view of the economists towards value is wrong from its basis.

What is referred to as the marginal utility value is an estimation meant to concentrate production based on the worst case scenario of distributing the commodities. Thus the value of a commodity is estimated based on the lowest limit so that production proceeds on a guaranteed basis. The marginal utility is not really the value of the commodity, nor even the price of the commodity, because the value of the commodity should be estimated by the amount of benefit in it at the time of estimation, taking into account the element of scarcity at that time. Its value would not drop if its price decreases later on, nor would it rise if its price increases as well, because its value was considered at the time of its evaluation. Therefore, marginal utility theory is a theory for price and not a theory for value, and there is a difference between price and value, even in the view of Capitalist economists. What governs the estimation of price is the abundance of demand together with the shortage of supply or the abundance of supply together with the shortage of demand; these matters are related to the level of production of a commodity, and not related to its distribution. Whereas value is estimated by the quantity of benefit present in the commodity at the time of evaluation, bearing in mind the element of scarcity, without considering it as part of the estimation; so supply and demand do not utterly affect the value.

Therefore, the subject of value is wrong from its basis, and any subject based on it is definitely wrong since the basic concept is false. However, if the value of the commodity was evaluated in terms of its benefit measured by the benefit of a commodity or an effort, then such an evaluation would be correct and would lead to much greater stability over the short term. If the value was estimated by the price, the evaluation would be relative not real, and it comes closer to changing every time according to the market. In this latter situation, it is false to refer to it as a value, and so the term value would not truly apply to it. It would rather become a means to obtain money according to the market and not according to what it possesses of benefits.

The Capitalists say that benefits are the result of the efforts which man expends. So, if the reward was not equal to the work then no doubt the level of production declines, and they conclude from this that the ideal method to distribute the wealth among the members of society is that which guarantees to achieve the highest possible level of production. This approach is totally wrong, since in reality the resources, which God has created, are the basis of the benefit in the commodities. And the expenses spent in increasing the benefit of these resources, or initiating a benefit in them together with the work, are that which made them in the form that provides a particular benefit. So considering the benefit as a

result of the efforts only is completely wrong and it neglects the raw material and other expenses. For in some cases, these expenses could be a compensation for a raw material, and not for an effort. Thus, the benefit could be a result of man's efforts or could be a result of the existence of the raw material, or could be a result of both of them, but it is not only as a result of man's efforts.

As for the decline in the level of production, it does not result solely from a decrease in the reward for work, since it could also result from the depletion of the wealth of the country, or from war, or for other reasons. As an example, the decline of production in both Britain and France after the Second World War did not result from a reduction in the reward to work, it resulted from the shrinkage in their influence over their rich colonies, and their involvement in the war. The decline in production of the US during the Second World War did not result from a reduction in the reward to work, it resulted from its involvement in the war against Germany. The decline in the Islamic World today did not result from a reduction in the reward to work, it is as a result of the intellectual decline into which the whole *Ummah* fell. Therefore, the inadequacy of the reward to work is not the only reason for decline in production, and it is false to assume from this premise that the ideal method of distribution is to secure the raising of the level of production. Arriving at the highest possible level of production has no relationship with the distribution of wealth amongst individuals.

The Capitalists say that the price is the incentive for production, because the motive for the person to expend any effort is his reward materially. This view is incorrect and contradicts reality. Man often expends effort in return for a moral reward such as the attainment of a reward from God, or for the sake of achieving ethical merit such as returning a favour. The needs of man can be materialistic such as material profit, they can be spiritual such as sanctification, or moralistic such as praise. So taking into consideration materialistic needs only is incorrect. In fact, a man could expend resources in satisfying a spiritual or a moral need more generously than he spends in satisfying a materialistic one. Therefore, the price is not the only incentive for production. Accordingly a stonemason could designate himself to work for months in cutting stones for building a mosque, a factory may assign its production for some days of the year for distribution to poor people, and a nation could

allocate some or focus all of its efforts on preparing to defend its territories. Such production is not motivated by price. Moreover, the materialistic reward itself is not confined to price, it could come in the form of other commodities or services. Hence, considering the price as the only incentive for production is incorrect.

One of the great anomalies of Capitalism is its consideration of price as the only regulator for distributing wealth amongst the members of society. They say that the price is the only constraint that forces the consumer in his possession and consumption to accept a limit comparable to his income, and it is the price which restricts the consumption of every individual in acceptance to what his revenues permit. Accordingly, through the rise in price of some goods and drop in the price of others, and in the availability of money to some people and its non-availability to others, the price regulates the distribution of wealth amongst consumers. Thus, every individual's share of the wealth of a country is not equal to his basic needs, but is equal to the value of the services in which he has contributed in producing commodities and services i.e. equal to what he owns of land or capital, or equal to what he carried out of work, and projects.

From this principle, which makes the price the regulator of distribution, Capitalism has effectively decided that man does not deserve life unless he is capable of contributing to the production of commodities and services. The person who is incapable of contributing, whether he was born with a physical or mental disability, does not deserve life, and does not deserve to take from the wealth that which satisfies his needs. Also the person who was born strong in body or in mind, and who is more capable of creating and possessing wealth however he wishes, deserves to consume luxuriously and deserves to practice control and mastery over others with his wealth. Also the one whose motivation to seek material gains is stronger will exceed others in possessing wealth whereas, the one whose adherence to spiritual and moral values (which control him during the earning of wealth) is stronger, will have less than others in possessions or wealth. This approach excludes the spiritual and moral elements from life and produces a life built upon a materialistic struggle to gain the means of satisfying materialistic needs. This eventually occurs in all countries which adopt and apply Capitalism. The domination of Capitalist monopolies has developed in countries adopting Capitalism,

with producers exercising control over consumers. A small group of people i.e. the owners of large oil, automotive, and heavy industry corporations, have come to dominate consumers, reigning over them by imposing certain prices for the commodities they produce. This has led to attempts to "patch up" the economic system. They did this by giving the State (government) the right to intervene in fixing the price (price control) in special circumstances to protect the national economy, to protect consumers, and to reduce consumption of some commodities, as well as limiting the authority of monopolies. They also included in the regulation of production certain public projects directed by the government. These measures contradict the basis of their economic system, which is economic freedom, and they are only applied in specific circumstances. Moreover, many Capitalists do not adopt this interventionist approach (Conservatives) and they scorn it, contending that the price mechanism alone is sufficient to achieve harmony between the interest of the producers and the interest of the consumers, without any need for governmental intervention. These patchwork solutions which are recommended by the supporters of intervention (Liberals), are only applied in certain circumstances and conditions, and even in these circumstances, the distribution of wealth amongst the individuals does not achieve the complete satisfaction of all basic needs for each and every individual.

The poor distribution of commodities and services, which resulted from the concept of freedom of ownership and from the concept of making the price the only mechanism for distributing wealth, will continue to dominate every society that applies Capitalism. With regard to American society, many Americans had a sufficient share of the wealth of the country, to satisfy most of their basic needs completely, and to satisfy even some of their luxuries. This situation occurred due to the immense wealth of that country which had reached a level by which there was an opportunity for every individual to satisfy all of his basic needs and some of his luxuries. However, this was not due to making the share of the individual equal to the value of the services he contributed in production. Furthurmore, putting the price mechanism as the controller of distribution has caused Capitalist monopolies in the West to look abroad to other countries for new markets, from which to gain raw materials and to sell their products. What the world suffers from, in terms of colonisation, regions of influence and economic invasion, is merely a

result of these monopolies and making price a tool in the distribution of wealth. Thus, the resources of the world are accumulated on this basis into the hands of Capitalist monopolies. All this is due to the false rules and principles established by Capitalism.

The Socialist Economic System

As for the Socialist economic system, with Communism being a part of it, it contradicts Capitalism. Most of the Socialist ideas appeared in the Nineteenth century. The Socialists fought fiercely against the opinions of the liberal school of thought i.e. they fought the Capitalist economic system. The powerful emergence of Socialism was due to the iniquity which the society suffered under Capitalism and owing to its many fallacies and inadequacies. By reviewing the Socialist schools of thought, it appears that they agree on three issues, which distinguish them from other economic schools of thought.

1. Achievement of a type of actual equality.

2. Abolition of private property either completely or partially.

3. The organisation of production and distribution of the commodities and services by means of all of the people.

However, despite their agreement over these three issues, they have fundamental differences over many points, the most important of which are:

Firstly: The Socialist schools of thought differ in the form of the eventual equality they aim to achieve. One group advocates arithmetic equality which means equality in every thing of benefit, thus each person is given an identical amount. Another group suggests common equality, which means observing the ability of everyone when distributing work and looking at the needs of every individual when distributing products. Equality in their view is established when the following principle is applied: "From each according to his strength i.e. his ability (meaning by this the work which he performs), and to each according to his need (meaning the distribution of production)." A third group adopts equality

in the means of production, since the resources are not sufficient to meet the needs of all individuals, the basis of distribution becomes: "From each according to his strength i.e. his ability, and to each according to his work." So equality is achieved when each person is facilitated of the means of production the same as others.

Secondly: The Socialist schools of thought differ in the quantity of private property which is to be abolished. One group adopts the abolition of private property completely, which is Communism. Another suggests the abolition of private property related to the means of production which is called capital i.e. factories, railways, mines and the like. Thus they prohibit the possession of any commodity which is used for production. Hence, one cannot own a house for the purpose of leasing it, nor a factory, nor a piece of land, but they may keep certain types of property for the purpose of consuming them. It is allowed for them to own everything they consume, so for example they can own a house to live in, and what the land and factories produce but not the land/factory itself. This is called Socialism of Capital. Another group does not advocate the abolition of private property except that which is relevant to agricultural land, these are the Agrarian Socialists (Agrarian Reformers). Yet another group says that every case in which public interest invites the transforming of a private property to public property, has to be studied. They call for restricted ownership of private property in many areas by putting laws for the maximum limit of interest and rent, a minimum limit for wages, and strive to give workers a share in the capital. This is called State Socialism.

Thirdly: The Socialist schools of thought differ in respect of the means they adopt to implement their objectives. Thus, revolutionary Socialism (Revolutionary Syndicalism) depends upon liberating the labour force by what it calls direct action i.e. the efforts of the labour force themselves, such as disruptive strikes, sabotage of machinery, and propagating the ideas of a General Strike amongst workers. They work to mobilise them around this idea, until the time comes when they are able to implement a General Strike, thus paralysing economic activity, which would eventually result in the demolition of the present economic system.

As for the Marxist Socialists, they believe in the natural law of evolution in society and believe that this alone is sufficient to destroy the current system, which will then be replaced by another system built on Socialism.

As for the advocates of State (Government) Socialism, their means to implement their thoughts is through legislation. So, by issuing canons they warrant the preservation of public interests and improvement in the conditions of the labour force. Additionally, by levying taxes, particularly phased-in taxes on capital and inheritance, they suggest that they will close the gap between private properties.

Fourthly: The Socialist schools of thought differ with respect to the structure which is needed to administer the projects in the Socialist system. For example the Capital Socialists want to assign the organisation of production and distribution to the government (State), while the Syndicalists want to confer management to organised groups of labour, headed by their chiefs (Guild Socialism).

The most famous and influential among Socialist theories are those of the German, Karl Marx. His theories have dominated the Socialist world, and upon them the Communist Party and the Union of Soviet Socialist Republics (USSR) in Russia were established. His theories continue to have a great impact until today.

One of the best known theories of Karl Marx is the theory of value, which he took from the thinkers of Capitalism, and upon which he attacked Capitalism. Adam Smith, who is considered the leader of the Liberal School of Thought in England and is viewed as the person who put the basis of the political economy i.e. the Capitalist economic system, defined value by saying: 'The value of any commodity depends on the magnitude (quantity) of effort spent in its production.' So the value of the commodity whose production needs two hours is worth twice the value of the commodity whose production needs only one hour. Ricardo who came after Adam Smith, explained his theory of work, when he defined value, saying: 'What determines the value of the commodity is not only the quantity of work spent directly in its production, but also the work spent in the past, in producing the tools and machines used in the production process as well.' This means that Ricardo believed that the value of the commodity depends on the expenses incurred during production. He referred these expenses to one element, which is the work.

After this, Karl Marx used Ricardo's theory of value in Capitalism as a

weapon to attack the concept of private property and Capitalism as a whole. He said that the only source of value is the work spent in a commodity's production, and that the Capitalist financier buys the energy of a worker with a wage that does not exceed the limit necessary to keep him alive and able to continue working. The financier then exploits the energy of the worker by making him produce commodities, whose value greatly exceed that which is paid to the worker. Karl Marx called the difference between what the worker produces and what he is actually paid, the 'surplus value'. He determined that this value represents what the landlords and the business people usurp from the worker's rights, in the name of revenue, profit or rate of return on capital, a matter which he did not acknowledge as valid.

Karl Marx was of the opinion that the Socialist schools which came before him had envisioned the success of their ideas to be dependent upon the inherent nature of the human being in his love for justice and support for the oppressed. These schools used to adopt new methods which they believed in, for their application upon society, and they presented these ideas to the governors, business people, and the enlightened people, urging them to implement their ideas. Karl Marx however, did not build his school of thought on this idea nor did he follow this approach. He built his school of thought on the basis of a philosophical doctrine known as the Theory of Historical Evolution, which is referred to as the Dialectic Theory. He conceived the establishment of the new system in society through the functional operation of the economic laws, and as a result of the law of evolution in society, without the intervention of a manager, a lawmaker, or a reformer. Karl Marx called this type of Socialism 'Scientific Socialism', to differentiate it from the Socialist methods that came before it and which were called 'Utopian Socialism'. The Socialist theory of Karl Marx is summarised as follows:

The system of the society in any age is a result of the economic situation. The transformations which affect this system all come as a result of a class struggle to improve their material situation. History tells us that this struggle ends with the victory of the class which is greater in number and worse in condition, over the wealthier class which is fewer in number. He called this the law of social evolution. It applies to the future as well as the past. So, in previous ages this struggle existed between the freemen and the slaves, then between the nobles and the

subjects, then later on between the nobles and the serfs (peasants), and between the leaders and chiefs in the order of sects. This struggle always ended with the victory of the oppressed class, which was greater in number, over the oppressor class, which was smaller in number. But after its victory the oppressed class turned to become a conservative oppressor class. Since the French revolution this struggle existed between the middle class (Bourgeoisie) and the working class. The first class became the masters of the economic projects, the owners of the capital, and became conservative. Facing it was the working class which owned nothing of the capital, but was much greater in number. Consequently, this situation led to a conflict of interest between the two classes, the origin of which was based on economic reasons.

The production fashion today, does not conform to the system of ownership. Production no longer remains individualistic i.e. being performed by the person alone, as it was in past ages, but rather has become associative i.e. conducted by individuals together. At the same time however, the system of ownership has not changed. So individual ownership continues and is still the basis of the system in current society. As a result of this the working class, which participates in production, does not have a share in the ownership of the capital, and remains under the mercy of the Capitalists (the owners of the capital), who do not by themselves participate in production. The Capitalists exploit the labour force, paying it only subsistence wages, and the workers are compelled to accept it since they have nothing but their efforts to sustain themselves. The difference between the value of the product and the labour wage, which Marx calls the surplus value, constitutes the profit which the Capitalist monopolises, while justice assumes it should be the share of the workers.

So the conflict would continue between these two classes until the system of ownership conforms with the system of production i.e. when ownership becomes Socialist or collective. This struggle will end with the victory of the working class according to the law of evolution in society, since it is the oppressed class and is greater in number.

Regarding the manner in which the working class will succeed, and the reasons for its success, this is based on the law of evolution in society. The current system of economic life bears within itself the seeds of the

forthcoming community, and this current system will vanish due to the effects of the economic laws to which it is subjected. There was a time when the middle class conquered the nobles and played an important role in economic life, since it became the owner of the capital. However, as the argument goes, its role has ended, and the time has come for it to relinquish its position to the working class. What obliges it to do so is the law of concentration and process of free competition. By the effect of the law of concentration the number of Capitalists (owners of the capital) diminishes, and the number of the working class increases. Through the effects of free competition, production surpasses every limit, and the quantity of production exceeds that which the consumers of the working class can buy with their low level of wage. This leads to a crisis causing some of the owners to lose their capital and enter the labour market. As the system progresses the intensity of crises increases, the gap between their occurrences closes, and the number of Capitalists decreases gradually. Then it is not long before a crisis greater than all the preceding crises occurs, of such major proportions that it demolishes the pillars of the Capitalist economic system, with the system of Socialism to be then established upon the Capitalist ruins. Marx conceived the emergence of Communism to be the last stage in the historical evolution, because it demolishes private property, and hence no more reason exists for the conflict of the classes in society, due to the absence of differences between them.

Karl Marx illustrated that the law of concentration was a part of the Capitalist economy. In summary, there is a migration of work and capital from some projects to others, so that some increase while others decrease. All these are scenarios which show the occurrence of concentration in production. If one investigated the number of projects in one branch of industrial production, such as chocolate factories for example, one would find that the number of projects had diminished gradually, over time, while the average number of the production work force increased in every project. This is an evidence that concentration occurred in this branch of production, since the greater sized production replaces the smaller production. So if the number of factories were for example, ten, they will in time become four or five large factories, and the rest will disappear.

Marx's determination of free competition meant the principle of the

freedom to work, which means that every person has the right to produce whatever he likes in the way he likes.

The economic crises, according to Marx, apply to every sudden disturbance that affects the economic equilibrium. The specific crisis includes all the kinds of crises which befall a particular branch of production, due to the imbalance between production and consumption. This incident occurs either due to overproduction or underproduction, or due to over-consumption or under-consumption.

As for the recurrent (periodic) major crisis, it appears in the form of violent convulsions which shake the pillars of the whole economic system, and becomes the point of separation between the period of economic boom and the period of economic depression. The periods of boom vary between three to five years in length, as do the periods of depression. Recurrent, major crises have special characteristics which distinguish them. These characteristics fall under three main qualities, which are: Firstly, the quality of generalisation. This means that in one country, the crisis hits all aspects of economic prosperity, or at least most of them. This general crisis appears at first in one country where it dominates, and then spreads to other leading industrial countries which were linked together by some permanent relations. The second quality is that it is recurrent. This means that the crisis occurs in repetitive and cyclical periods. The period which separates between one crisis and another fluctuates between seven and eleven years. Its occurrence is not over a fixed time although it is recurrent. The third quality is that of excessive production, such that the owners of the large projects face great difficulty in disposing of their products, so the supply exceeds demand for many products leading to the crisis.

Karl Marx considered that these major crises force some people to lose their capital, so the number of owners diminishes and the number of workers increases. These occurrences are what will lead finally to the major crisis in the society which demolishes the old system.

This is a summary of Socialism including Communism as one of its forms. From this summary it appears that the Socialist schools of thought including the Communists, strive to achieve real equality amongst the individuals; either equality in benefits, equality in the means of

production, or absolute equality. Any kind of such equality is impossible to achieve, and it is nothing but a hypothetical assumption. It is impractical and therefore impossible. This is because equality in itself is unreal, and thus impractical. People by the very nature with which they were created vary in their physical and mental capabilities, and they vary in the satisfaction of their needs. So equality amongst them cannot be achieved. Even if one distributed equal shares of commodities and services among the people by force, it would be impossible for them to be equal in using this wealth in production or utilisation. And it would be impossible for them to be equal in terms of the quantity they need to satisfy their respective needs. Therefore, equality between them is a speculative and hypothetical concern.

Moreover, equality by itself amongst people, while they are different in strength/power, is considered far from the justice which the Socialists claim they try to achieve. The disparity between people in terms of ownership, and in the means of production, is inevitable and quite normal. Every attempt at achieving equality is destined for failure as it contradicts with the natural disparity existent amongst human beings.

Regarding the complete abolition of private property, this contradicts with man's nature, because ownership is a manifestation of the survival instinct, which is definitely existent in man. Being natural in him, a part of him, and a manifestation of his natural energy, it is impossible to be eliminated since it is instinctive. Anything that is instinctive in man cannot be eliminated from him as long as he is alive. Any attempt to abolish private property is nothing but a suppression of the human beings natural instincts, and can only lead to anxiety. Therefore, it is natural to organise this instinct rather than trying to eliminate it.

With regard to the partial abolition of ownership, it has to be studied. If what is meant by this is to put a ceiling on the magnitude of commodities that can be owned, then this would be a limitation in quantity, which is wrong, since it limits the activity of man, obstructs his efforts, and reduces his production. By preventing people from owning that which exceeds a certain level, this effectively stops them at that limit, interrupting the individuals from their activities, and thereby depriving the community from benefitting from the activities of these individuals.

However, if ownership of commodities and services is restricted to a certain manner without restriction in the quantity owned, this would be acceptable, as it does not obstruct the activity of man. This approach organises the ownership of property among individuals, and encourages them to expend more effort and increase activity.

If the partial abolition of ownership means that the individual is prevented from owning certain properties, whilst other properties can be owned without any limit over the quantity, this has to be examined. If the beneficial nature of these properties cannot be enjoyed by the individual alone, except by depriving the public of that property, then it is natural to prevent the individual from owning that property individually; such as public roads, town squares, rivers, seas, and the like. The restriction is decided by the nature of the property. There is, therefore, nothing wrong in banning the individual ownership of those properties which are of associative benefit, because this ownership was determined by the nature of the property itself.

If the nature of the property does not require prohibition of individual ownership, further analysis should still be conducted; if the property can be included under the first type i.e. properties whose individual ownership would deprive the community, such as water and mineral resources, then there is nothing wrong in banning their individual ownership. The issue which makes this type of property included under the first type is that by its nature if it was owned individually it would deprive the community of it. However, if owning the property does not deprive the community of it, then there should be no restriction on its ownership. To do so would unfairly limit ownership for no reason. This would be like limiting the ownership by quantity which will only result in restricting man's activities, interrupting his efforts, reducing his production, and stopping him from work when he reaches the set limit of ownership.

The partial abolition of ownership in Socialism is a limitation of ownership by quantity, rather than by the ways and means of ownership. It prevents ownership of some properties, which by their nature and by the nature of their origin should be individually owned. Socialism either limits ownership in magnitude, such as limiting ownership of land up to a certain area, or it limits ownership of certain properties such as the means of production. Many of these properties, by their nature, could be owned by individuals. Ownership restrictions of this type of property

restricts activity whether the restriction was pre-specified by the law, such as preventing inheritance, ownership of mines, railways, or factories; or if it were left to the State to decide, on a case by case basis, to prevent possession wherever public interest requires it to do so. All this is restriction of the activity of individuals, for these properties by their very nature can be owned by individuals.

The organisation of production and distribution through people cannot (and should not) be achieved by inciting disturbances and anxiety amongst people, or by inciting hatred between them. This can only lead to anarchy, rather than organisation. Furthermore, the organisation of production in the community cannot be achieved naturally by making the working class feel the oppression of business people, since the business people could be smart and ingenious enough to satisfy the needs of the labour force, as is the case with the factory workers in the United States. So the working class do not feel the oppression in terms of having the fruits of their efforts exploited. In this way the evolution which would better organise production and distribution would not occur. This organisation should come through proper laws and solutions which are built on a definite basis that deals with the real nature of the problems. Socialism relies on organising the production and distribution, whether by inciting tension and disturbances amongst the working class, or by the natural law of evolution in society, or through manmade (*Wadh'iya*) legislation and canons that do not emanate from a definite basis or creed. Therefore this organisation is false from its basis.

This outlines the fallacies of Socialism. With regard specifically to the Socialism of Karl Marx, its fallacy appears in three aspects:

Firstly: His opinion on the theory of value is erroneous and disagrees with reality. The opinion, stating that the only source for the value of the commodity is the work spent in its production, disagrees with reality since the spent work is only one but not the only source of its value. There are other elements, besides the work, that enter in the value of the commodity. There is the raw material upon which the work was carried out, or the demand for the benefit of the commodity as well. The raw material could contain a benefit that exceeds the work spent in its procurement such as in hunting for example. The benefit of the commodity could have no demand in the market, and be forbidden for

export, such as wine for Muslims. So putting work as the only source of value is incorrect, and does not conform to the reality of the commodity as it is.

Secondly: His opinion states that the social order existing at any time, is a product of the economic situation, and that the various transformations which befall this system are all due to one reason, which is the struggle of the classes for the objective of improving their material situation. This opinion is erroneous, baseless, and built upon a doubtful and hypothetical assumption. The reason for its error and disagreement with reality is obvious from historical events and the current situation. We see that the transformation of Russia into Socialism did not occur due to a materialistic evolution, nor due to a class struggle that led to the change of the system. Rather, a group took over through a bloody revolution, and started to apply its thoughts upon the people, and changed the system. The same happened in Socialist China. The application of Socialism in East Germany rather than West Germany, and Eastern Europe rather than Western Europe did not occur as a result of any class struggle. Rather it occurred through the conquering of these countries by a Socialist State which imposed its system upon the conquered nations. The same occurred with the Capitalist states, with the Islamic State, and with any other system. Furthermore, the countries which this law predicted would change their system through class struggle, namely Germany, England, and the United states, are all Capitalist countries where the owners of capital and workers are many. They were not Czarist Russia or China, which were agricultural rather than industrial, and where the number of owners of capital and workers were much fewer in comparison to the West. Despite the overwhelming presence of the two classes in Western Europe and the United states, they were not converted to Socialism, and they all still apply Capitalism till this day. The presence of these two classes (i.e.capital owners and workers) did not have any effect on their system. This alone is enough to refute this theory from its basis.

The third appearance of error in Karl Marx's theory appears in what he said about the law of social evolution, that the system of economic life is destined for extinction by the effect of the economic laws which control it, and that the middle class which won the battle against the class of the nobles i.e. the owners of the capital will ultimately evacuate

their place for the labour class, due to the law of concentration. The theory of Karl Marx concerning concentration of production, on which he builds the increase in the number of the workers and the decrease in the number of the owners of capital, is false. This theory is false because there is a limit which concentration of production cannot overstep. So it arrives at a certain limit and stops and thus will no longer be a catalyst in the evolution imagined by Marx. Moreover, concentration of production does not exist at all in one of the main branches of production, namely agriculture. How then can the law of evolution occur in society? Besides, Karl Marx asserts that concentration of production is followed by concentration of wealth (resources), which results in a reduction in the number of financiers, and an increase in the number of workers, who own nothing. This view is erroneous, since the concentration of production could result in an increase in the number of capital owners, and could result in the working class becoming capital holders. The major projects, which are conducted by the large Corporations, usually have shareholders from the working class, which is an example that refutes this theory. Moreover, many of the working class in the factories have high salaries, such as engineers, chemists and managers, thus being able to save a great part of their salaries, and becoming investors themselves, without the need to establish independent projects. Therefore, what Karl Marx propounded about workers and evolution does not apply to them.

This is but a brief examination of the principles upon which the Capitalist and Socialist, from which came the Communist, economic systems are established. From this examination the fallacies present in these principles are apparent. This is on the one hand; on the other hand, both systems are contradictory to the Islamic method in addressing the problems and contradictory to Islam itself.

As to their contradiction to the Islamic method of solving the problems, one finds that the Islamic method in solving the economic problem is the very same method Islam uses in solving any of the other human problems. The common approach of Islam is to study the reality of the economic problem, understand it, and then deduce a solution for the problem from the *Shari'ah* texts after studying these texts, and to ensure that they apply to that particular problem. This is different from the Capitalist and Socialist method. In Capitalism, the situation which resulted from the problems, is used as a source for the solutions

(pragmatism). In Socialism the solutions are taken from hypothetical assumptions which are imagined to be existent in the problem, and the solutions are put according to these assumptions. Each of these two methods is different to the method of Islam, so it is not allowed for a Muslim to adopt them.

The contradiction of the Capitalist and Socialist, and from it the Communist, economies to Islam is that Islam adopts its solutions as divine rules (*Ahkam Shari'ah*) derived from the legislative sources while the Capitalist and Socialist economic solutions are not divine rules, but are from a system of *Kufr*. Judging on things according to them means ruling with other than what Allah has revealed, which is not allowed for any Muslim to adopt in any way. Their adoption is an open sin (*Fisq*) if their adopter does not believe in them. But if he believed that they are the proper rules and that Islamic rules do not suit the modern age and do not offer solutions to the current economic problems, then this is kufr, may Allah ﷻ protect us from it.

2
Economy

The word economy (*Iqtisaad*) is derived from an old Greek term, which means the planning of home affairs, such that its active members associate in producing the commodities and performing the services, and all of its members share in enjoying what they possess. Through time, people extended the meaning of home until it meant the community which is governed by one State.

It is not intended to use the word economy (*Iqtisaad*) in its linguistic meaning which is saving or to mean property. What is meant is the technical meaning of the word i.e. the management of property, either by its increase, and securing of its production which is discussed in economic science; or by the manner of its distribution, which is discussed in the economic system.

Though both economic science and the economic system deal with the economy, their respective meanings differ significantly. The economic system is not affected by fluctuations in the amount of wealth. The fluctuations in the amount of wealth do not affect the form of the economic system. Therefore, it is a serious error to look at the economy as one subject, and to discuss it as one topic, as this leads to either error in understanding the economic problems needing to be solved, or misunderstanding the factors that increase the wealth in the country. This is because the management of the community's affairs in respect of the creation of wealth is one issue, and the management of the people's affairs in respect of wealth distribution is another issue entirely. So, the subject of managing the economic material must be separated from the subject of managing its distribution. The first is related to the means and the second is connected with the thought. The economic system must be discussed as a thought that is based upon the viewpoint of life (the creed of a particular ideology), and economic science must be discussed as a science that has no relationship with the viewpoint in life.

The most important subject in this context is the economic system, because the economic problem revolves around mankind's needs, the means of their satisfaction, and utilising these means. Since the means are present in the universe, their production does not cause an essential problem in satisfying the needs, but rather the needs drive man to produce these means. However, the real problem present in the relationships of people i.e. in the society, results from enabling or restricting people from utilising these means. This results from the subject of man's ownership of these means. This is the basis of the economic problem, which must be treated. So the economic problem results from the subject of possessing the benefits, not from producing the means which give the benefit.

The Basis of the Economic System

The benefit in a thing represents the suitability of that thing to satisfy a need of man. Benefit comprises two elements. One is the extent of desire for that particular thing felt by a human. The second is the merits existent in the thing and its suitability to satisfy human needs, as opposed to the need of a particular person. This benefit results from either human effort, the commodity, or from both of them. The form of human effort includes the intellectual and the physical effort which he expends to initiate a property (*Maal*) or a benefit from a property. The term commodity includes everything possessed for utilisation through buying, leasing or borrowing, whether by consumption, such as an apple or by usage such as a car; or through utilising it like borrowing machinery or leasing a house. Property (*Maal*) includes money such as gold and silver, commodities such as clothes and foodstuffs, and immovable properties such as houses and factories and all other things which are possessed. Since property itself satisfies human needs, and human effort is a means to obtain the property or its benefit, then the property is the basis of the benefit, whilst man's effort is only a means that enables him to obtain the property. Hence, man by his nature strives to obtain such wealth for possession. Therefore man's effort and property are the tools which are used to satisfy his needs, they are the property which man strives to possess. Therefore wealth is the property (*Maal*) and the effort together.

The individuals' acquisition of wealth occurs either from other

individuals, such as the possession of property in the form of a gift, or directly, such as the possession of raw materials. Acquisition of a commodity is for either:

1. consumption, like possessing an apple,
2. utilisation, like owning a house,
3. possession of the benefit of the property, like leasing a house,
4. or possession of the benefit resultant from human effort, like an architect's blueprints.

Possession of wealth in all of its forms, is either through compensation such as selling and leasing property, and wages of the employee; or it is not compensation such as donations, grants, presents, inheritance or loans. However, the economic problem lies in the possession of wealth and not in the creation of wealth. The economic problem results from the viewpoint towards ownership, from the ill disposition of this ownership, and from the maldistribution of the wealth amongst people. The problem doesn't stem from any other matter, and therefore addressing this aspect is the basis of the economic system.

The basis upon which the economic system is built constitutes three principles:

1. Ownership,
2. Disposal of the ownership, and
3. The distribution of wealth amongst the people.

The View of Islam towards the Economy

The view of Islam towards wealth differs from its view of utilising it. Islam considers the means that produce a benefit a subject different from the subject of possessing the benefit. So property and human effort are the components of wealth, and they are the means which produce benefit. Their position in the view of Islam regarding their existence in life and in regard of their production differs from the question of using them, and from the method of possessing this benefit. Islam interferes directly in the question of utilising some properties. So it prohibits the use of some commodities such as wine and dead foodstuffs. Similarly, it

prohibits benefiting from some of man's actions, such as dancing and prostitution. It also prohibits the trade in commodities that are forbidden to be eaten, whilst prohibiting the hiring actions that are forbidden to be performed. This refers to the utilisation of the property, and man's effort. However, regarding the method of possessing property and man's effort, Islam has put numerous laws regulating this ownership, such as laws of hunting and land reclamation, and the laws of leasing, manufacturing, inheritance, donations and wills.

This is regarding the utilisation of wealth and the manner of its initial ownership. Regarding generating the production of wealth, Islam encouraged that through motivating the people generally to earn. Islam did not interfere in defining the technical manner of increasing production, or the quantity of production, rather it left that to people to achieve as they like. Turning to the existence of property, it exists in this world naturally. Allah ﷻ, has created it, and left it for man's disposal. Allah ﷻ:

هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا

"It is He who created for you all that exists on earth." [Al-Baqarah: 29]

And He ﷻ said:

اللَّهُ الَّذِي سَخَّرَ لَكُمُ الْبَحْرَ لِتَجْرِيَ الْفُلْكُ فِيهِ بِأَمْرِهِ ولِتَبْتَغُوا مِنْ فَضْلِهِ

"Allah is He Who put at your disposal the sea so that the ships may sail by His command, and so as you may seek His bounty." [Al-Jathiyah: 12]

And He ﷻ said:

وَسَخَّرَ لَكُمْ مَا فِي السَّمَاوَاتِ وَمَا فِي الأَرْضِ جَمِيعًا مِنْهُ

"He put at your disposal that which is in the heavens and that which is in the earth, all from Him." [Al-Jathiyah: 13]

And He ﷻ said:

فَلْيَنْظُرِ الإِنسَانُ إِلَى طَعَامِهِ, أَنَّا صَبَبْنَا الْمَاءَ صَبًّا, ثُمَّ شَقَقْنَا الأَرْضَ شَقًّا, فَأَنْبَتْنَا فِيهَا حَبًّا, وَعِنَبًا وَقَضْبًا, وَزَيْتُونًا وَنَخْلاً, وَحَدَائِقَ غُلْبًا, وَفَاكِهَةً وَأَبًّا, مَتَاعًا لَكُمْ وَلأَنْعَامِكُمْ

"Let man consider his food. How We pour water in showers. Then split the earth in fragments. And cause the grains to grow therein. And grapes and fresh vegetation. And olives and dates, and enclosed gardens, dense with lofty trees. And fruits and grazes. Provision for you and your cattle." ['Abasa: 24-32]

And He ﷻ said:

وَعَلَّمْنَاهُ صَنْعَةَ لَبُوسٍ لَكُمْ لِتُحْصِنَكُمْ مِنْ بَأْسِكُمْ

"And We taught him the art of making garments (of mail) for your benefit, to guard you from each other's violence." [Al-Anbiyaa: 80]

And He ﷻ said:

وَأَنْزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعُ لِلنَّاسِ

"And We sent down iron, in which is great might, as well as many benefits for mankind." [Al-Hadid: 25]

Allah ﷻ illustrated in these verses and others, that He ﷻ created property and created man's efforts, and He ﷻ did not discuss anything else that may be linked to them, which indicates that He ﷻ did not interfere in the property or in man's effort, except that He ﷻ showed that He ﷻ created them for people to utilise. He ﷻ also did not interfere in the production of wealth; there is no *Shari'ah* text (divine legal text) which denotes that Islam interferes in the production of wealth. On the contrary, we find the *Shari'ah* texts indicate that the *Shari'ah* has left to the people the matter of extracting the property and improving man's effort. It was narrated that the Prophet ﷺ said in the issue of manual pollination of date trees: **"You are more aware of the routine issues of your daily life (amr dunyakum)."** It is also narrated that **the Prophet ﷺ sent two of the Muslims to Jurash of Yemen to learn weapons manufacturing.** These examples indicate that the *Shari'ah* has left the matter of production of wealth to the people, to be produced according to their experience and knowledge.

From all of this, it is apparent that Islam focuses upon the economic system and not economic science. It makes the use of wealth, and the method of possessing its benefit as its subject. It does not address the production of wealth nor the means of the benefit at all.

Economic Policy in Islam

The economic policy is the objective of the laws which deal with the management of human affairs. The economic policy in Islam is to secure the satisfaction of all basic needs for every individual completely, and to enable him to satisfy his luxuries as much as he can, as a person living in

a particular society, which has a certain way of life. So Islam looks at every individual by himself rather than the total of individuals who live in the country. It looks at him as a human being first, who needs to satisfy all of his basic needs completely, then it looks to him in his capacity as a particular individual, to enable him to satisfy his luxuries as much as possible. Islam looks to him at the same time, considering him a person linked with others by certain relationships run in a certain way, according to a particular fashion. The purpose of the economic policy in Islam is not to only raise the standard of living in the country without looking to secure the rights of life for every individual completely. Nor is it just to provide the means of satisfaction in the society, leaving people free to take from such means as much as they can, without securing the right of livelihood for each individual. Rather, it addresses the basic problems of everyone as a human being, who lives according to particular relationships, then enabling him to raise his standard of living and achieve comfort for himself, according to a particular fashion of life. As such it is different from all other economic policies.

While putting the economic rules for the human being, Islam relates the legislation to the individual to secure the right of livelihood and to secure the luxuries, while it verifies that the society has a special way of life. So, it takes into consideration what the society should be, at the same time it seeks to secure livelihood and to enable satisfying luxuries. It makes its view towards what the society ought to be as a basis for its view towards the livelihood and prosperity. Therefore, one will find that the divine rules (*Ahkam Shari'ah*) have secured the satisfaction of all of the basic needs (food, clothing and housing) completely, for every citizen of the Islamic State. This is achieved by obliging each capable person to work, so as to achieve the basic needs for himself and his dependants. Islam obliges the children or the heirs to support the parents if they are not able to work, or obliges the State Treasury (*Bait ul-Mal*) to do so, if there is nobody to support them. As such, Islam requires that the individual secures for himself and his dependants the satisfaction of the basic needs i.e. adequate foodstuffs, clothing and housing. Islam then encourages the individual to secure the luxuries of life as much as he can.

Islam also prevents the government from taking property through the imposition of taxes, except in cases where it is obligatory upon all Muslims to care for e.g. famine or Jihad. Tax then is taken only on the

wealth which exceeds that which each individual normally uses to satisfy his basic needs and luxuries. In this way, it achieves the right of livelihood for everyone individually, and facilitates the securing of the luxuries. At the same time, Islam sets certain limits within which the individual can earn in order to satisfy his basic needs and luxuries, and organises his relationships with others according to a particular fashion. So Islam prohibits the production and consumption of wine by Muslims, and it does not consider it an economic material. Islam prohibits the taking of riba (usury, interest, etc.) and its usage in transactions for everyone who holds Islamic citizenship. It does not consider *Riba* as an economic commodity, whether for Muslims or non-Muslims. So Islam considers what the society ought to be when utilising any property as a fundamental basis for utilising the economic commodity.

Islam did not detach the individual from being human, nor the human being from being a particular individual. Furthermore, Islam does not consider what the society ought to be separate from the issue of securing the satisfaction of the basic needs for every individual, and enabling him to satisfy his luxuries. Rather, Islam makes the satisfaction of the needs and what the society ought to be, as two inseparable matters from each other, but by making what the society ought to be as a basis for satisfying the needs. For the sake of satisfying all the basic needs completely, and to enable satisfaction of the luxuries, the economic commodity should be available to people, and it will not be available to them unless they strive to earn it. Therefore, Islam urges people to earn, seek the provision and strive. And it made striving to earn the provision compulsory.

Allah ﷻ said:

"So walk in the paths of the earth and eat of His sustenance which He provides." [Al-Mulk: 15]

However, this does not mean that Islam interfered in the production of wealth, or that it demonstrated the technical matters related to increasing production, or the amount of production, because it has nothing to do

with production. Rather it only encourages on working for the earning of property. Many *Ahadith* came to encourage the earning of property. In one *Hadith*, **the Prophet Muhammadﷺ shook the hand of Sa'ad ibn Muadh (ra) and found his hands to be rough. When the Prophet ﷺ asked about it, Sa'ad said: "I dig with the shovel to maintain my family." The Prophet ﷺ kissed Sa'ad's hands and said: "(They are) two hands which Allah loves." The Prophet ﷺ said: "Nobody would ever eat food that is better than to eat of his own hand's work."**

It was also narrated that Umar b. Al-Khattab (RA) passed by some people, who were known as readers of the Qur'an. He saw them sitting and bending their heads, and asked who they were. He was told: "They are those who depend (*Al-Mutawwakiloon*) upon Allah ﷻ." Umar replied: "No, they are the eaters who eat the people's properties. Do you want me to describe those who really depend upon Allah (*Al-Mutawwakiloon*)?" He was answered in the affirmative, and then he said: "He is the person who throws the seeds in the earth and then depends on his Lord The Almighty, The Exalted (*'Azza wa jalla*)."

Thus we find that the verses and the *Ahadith* encourage striving to seek provision, and working to earn property, just as they encourage the enjoyment of the property and eating of the good things.

Allah ﷻ said:

قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ

"Say: who has forbidden the beautiful gifts of Allah, which He has provided for His servants, and the things, clean and pure, (that He has provided)?" [Al-A'raf: 32]

And:

وَلا يَحْسَبَنَّ الَّذِينَ يَبْخَلُونَ بِمَا آتَاهُمُ اللَّهُ مِنْ فَضْلِهِ هُوَ خَيْرًا لَهُمْ بَلْ هُوَ شَرٌّ لَهُمْ سَيُطَوَّقُونَ مَا بَخِلُوا بِهِ يَوْمَ الْقِيَامَةِ

"And let not those who are niggardly, who withhold the gifts which Allah has given them from His Grace, think that it is good for them. Rather it is worse for them. That which they hoard will be their collar on the Day of Resurrection. To Allah belongs the heritage of the heavens and the earth, and Allah is informed of what you do." [Al-Imran: 180]

And:

يا أيها الَّذِينَ آمَنُوا أَنفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنْ الأَرْضِ

"O you who believe! Spend of the good things which you have earned, and of that which We bring forth from the earth for you." [Al-Baqarah: 267]

And:

يا أيها الَّذِينَ آمَنُوا لا تُحَرِّمُوا طَيِّبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ

"O you who believe! Do not prohibit the good things which Allah made halal for you." [Al-Ma'idah: 87]

And:

وَكُلُوا مِمَّا رَزَقَكُمُ اللَّهُ حَلالاً طَيِّبًا

"And eat of that which Allah provided for you, halal and good."
[Al-Ma'idah: 88]

These verses, and the like, denote clearly that the divine rules (*Ahkam Shari'ah*) related to the economy, aim at acquiring property and enjoying good things. So Islam obliged individuals to earn, and ordered them to enjoy wealth that they earned, so as to achieve economic growth in the country, to satisfy the basic needs of every person, and to enable the satisfaction of his luxuries.

In order to facilitate the acquisition of property, we find that Islam puts the rules related to the manner of possessing wealth without any complications. So it made the manner of possessing property very easy. Thus Islam defined the legal means of ownership, and it defined the contracts through which property ownership is exchanged, and left man free to develop the styles and means by which he earns, and it did not interfere in the production of the wealth.

Islam defines the legal means of ownership and contracts in general guidelines that include legal principles, and rules, under which numerous issues belong and against which numerous rules are measured by analogy (*Qiyas*).

Thus it obliged work, put its detailed rules, and left the person to work as a carpenter, manufacturer, technician, trader, etc. The gift is legislated in such a way that donation can be compared to it by analogy in terms of being a means of ownership. Employment was legislated in such a way that representation (*Wakala*) can be compared to it by analogy in terms of being entitled to compensation. Thus we find that the means of ownership and the contracts are detailed by *Shari'ah* in general outlines and set in such a way as to include any contemporary incidents; yet they do not allow for any new type of transactions. It is obligatory that people restrict themselves to the transactions that are defined by the *Shari'ah*, which apply to new incidents however numerous.

As such, the Muslim proceeds steadily in earning property, without being faced with obstacles, which prevent him from earning through *Halal* means. Thus, the satisfaction of all basic needs is possible for every person. Islam not only urges the individual to earn, it also requires the

State Treasury (*Bait ul-Mal*) to be responsible for the support of all the citizens. So it made the support of the mentally or physically disabled as the State's responsibility, and it made the provision of the basic needs of the nation (*Ummah*) as one of its duties, because the State is obliged to look after the affairs of the *Ummah*.

Bukhari narrated from Ibn Umar: The Prophet ﷺ said: **"The Imam is in charge (ra'i) and he is responsible for his citizens."**

In order for the State to perform the duty placed on it by the *Shari'ah*, the *Shar'a* gave the State the authority to collect certain revenues such as the head tax (*Jizya*) and the land tax (*Kharaj*), with *Zakat* also to be collected by the State Treasury (*Bait ul-Mal*). The State also has the right to collect funds for those services which are a duty upon the *Ummah*, such as the repair of roads, building hospitals, feeding hungry people, and the like.

The *Shar'a* made the State responsible for the management of public property. The *Shar'a* prevents individuals from running public property on their own, because the overall responsibility is for the *Imam*, and none of the citizens is entitled to assume this responsibility unless he was designated by the *Imam*. The public properties of water, oil, iron, copper and the like, are properties which must be utilised in order to achieve economic progress for the nation (*Ummah*), because these properties belong to the *Ummah*, and the State is merely in charge of them for their administration and development. When the State supplies funds, and discharges its duty of looking after the affairs of the people, and when every capable individual earns property, then abundant wealth becomes available for the satisfaction of the individuals basic needs completely, and the luxuries.

However, the economic progress through motivating every capable individual to work, assigning properties to the State and the investing of public property, all that is a means to satisfy the needs, not for the sake of having property for itself, nor for boasting, nor to spend it in sin, nor for arrogance and oppression. That is why the Messenger of Allah ﷺ said: **"Whosoever sought the life (matters) legitimately (halal) and decently he will meet Allah ﷻ with his face as a full moon; and whosoever sought it arrogantly and excessively he will meet Allah**

while He is angry at him."

The Prophet ﷺ also said: **"Do you have, son of Adam, of your property except that which you ate and consumed, that which you wore and exhausted, and that which you donated and kept (for yourself)?"**

Allah ﷾ the Supreme said:

وَلا تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ

"Don't commit Israaf (spending or going beyond the limits imposed by Islam); surely He does not like those who condone Israaf." [Al-A'raf: 31]

Islam made the aim of owning property a means towards satisfying the needs and not for the purpose of boasting. It also made managing the economy as a whole according to Allah ﷾'s orders obligatory. It ordered the Muslim to seek the Hereafter through what he earns and not to forget his share of this worldly life.
Allah ﷾ said:

وَابْتَغِ فِيمَا آتَاكَ اللَّهُ الدَّارَ الآخِرَةَ وَلا تَنسَ نَصِيبَكَ مِنْ الدُّنْيَا
وَأَحْسِنْ كَمَا أَحْسَنَ اللَّهُ إِلَيْكَ وَلا تَبْغِ
الْفَسَادَ فِي الأَرْضِ

"But seek the abode of the Hereafter in that which Allah has given you, and do not neglect your portion of worldly life, and be kind even as Allah has been kind to you, and seek not corruption in the earth." [Al-Qasas: 77]

The philosophy of Islamic economy dictates that all economic actions are according to the commandments of Allah ﷾, based on recognising the relationship with Allah ﷾. The idea upon which the management of the Muslims affairs in society is built, is directing the economic activities according to the divine rules (*Ahkam Shari'ah*), as a complete way of life (*Deen*). Similarly, the management of the affairs of the other (non-

Muslim) citizens of the State restricts their economic activities according to the divine rules. It permits them whatever Islam has permitted, and it forbids them of whatever Islam has prohibited.
Allah ﷾ said:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا

"And whatsoever the Messenger gives you take it, and whatsoever he forbids you abstain from it." [Al-Hashr: 7]

And He ﷾ said:

يا أيها النَّاسُ قَدْ جَاءَتْكُمْ مَوْعِظَةٌ مِنْ رَبِّكُمْ وَشِفَاءٌ لِمَا فِي
الصُّدُورِ

"O mankind! There has come unto you an exhortation from your Lord, a cure for that which is in the breasts." [Yunus: 57]

And He ﷾ said:

فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ
عَذَابٌ أَلِيمٌ

"And let those who withstand his (the Messenger's) order beware, lest some trial or painful punishment befall them." [An-Nur: 63]

And He ﷾ said:

وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنزَلَ اللَّهُ

"And rule between them with that which Allah revealed." [Al-Ma'idah: 49]

Islam secured the observance of these rules by motivating the Muslim to adhere to this economic policy through the fear of Allah ﷻ (*Taqwa*), and the abiding of the people, in general, to it through the legislated laws which the State implements upon the people.

Allah ﷻ said:

يا أيها الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنْ الرِّبَا إِنْ كُنتُمْ مُؤْمِنِينَ

"O you who believe! observe your duty to Allah and give up what remains (due to you) from riba, if you are (in truth) believers." [Al-Baqarah: 278]

And He ﷻ said:

يا أيها الَّذِينَ آمَنُوا إِذَا تَدَايَنتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ

"O you who believe! When you contract a debt for a fixed term record it in writing..." [Al-Baqarah: 282]

until He ﷻ says:

فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ

"....save in the case when it is actual merchandise which you transfer among yourselves from hand to hand, in that case it is no sin for you if you write it not." [Al-Baqarah: 282]

Islam thus explained the way in which these rules are implemented and the way in which people's adherence to these rules is guaranteed.

This demonstrates how the economic policy in Islam is built on

satisfying the needs of every individual, as a human being who lives in a particular society, and on earning the wealth to provide that which satisfies the needs. The economic policy in Islam is also established on one idea, which is the implementation of all actions according to divine rules. It is implemented by every individual through motivating of his fear of Allah ﷻ and applied by the State through culturing the people and through implementing laws.

The General Economic Principles

From analysing the divine rules related to the economy, it is evident that Islam addresses the issue of enabling people to utilise wealth. This is the Islamic view regarding the economic problem of society. When addressing the economy, it deals with the initial acquisition of wealth, its disposal and its distribution amongst the public. The rules that deal with the economy are thus based on three principles:

1. Initial ownership,
2. Disposal of the ownership, and
3. Distribution of wealth amongst the people.

With regard to the issue of ownership, it belongs to Allah ﷻ, since He ﷻ is the Owner of all the Dominion (*Malik al-Mulk*). He ﷻ has stated in the texts that property (*Maal*) belongs to Him.
He ﷻ said:

وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ

"And give them from the property of Allah, which He gave to you." [An-Nur: 33]

Property, therefore, belongs to Allah ﷻ alone. However, He has put mankind in charge of property, provided them with it, and has given them the right of owning it.
Allah, the Exalted said:

وَأَنْفِقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلَفِينَ فِيهِ

"And spend from what He put you in charge of." [Al-Hadid: 7]

And He ﷻ said:

وَيُمْدِدْكُم بِأَمْوَالٍ وَبَنِينَ

"And He has provided you with properties and offspring." [Nuh: 12]

Clearly, when Allah ﷻ addresses the issue of the origin of property, He attributes its ownership to Himself, and says:

مَالِ اللَّهِ

"...the property of Allah..." [An-Nur: 33]

Allah ﷻ addresses the issue of transferring the property to human beings, He ﷻ attributes the property to them and says:

فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ

"Give them their properties." [An-Nisa: 6]
And:

خُذْ مِنْ أَمْوَالِهِمْ

"Take from their property." [At-Tauba: 103]
And:

فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ

"So for you is your principal sum." [Al-Baqarah: 279]

And:

وَأَمْوَالٌ اقْتَرَفْتُمُوهَا

"And property you possessed with hard work." [At-Tauba: 24]
And:

وَمَا يُغْنِي عَنْهُ مَالُهُ

"And his property will do him no good." [Al-Lail: 11]

However, the right of ownership of property that came through its deputation (*Istikhlaf*) is general for all humans. This is not, however, the actual ownership, it is only the right of ownership. They are deputised to in terms of the right of ownership. Actual ownership by a particular person takes place when the Islamic conditions of ownership are met, such as obtaining the permission of Allah ﷻ. The actual ownership of property thus takes place when an individual obtains the Legislator's permission to possess that property. This permission is a specific proof that the individual becomes the owner of that property. Assigning (deputising) all mankind for ownership (of property) is established by the general (*'Aam*) evidence, and this proves the right of ownership. Assigning an individual to the actual ownership (of a certain property) is made possible by the specific permission, which the Legislator gives to the individual.

The Legislator has stated that an individualistic type of ownership exists where each individual has the right to possess through one of the allowed means of possession. Abu Dawud narrated from the *Sunnah* that the Prophet ﷺ said: **"Whoever surrounded a piece of land with a wall, then it becomes his."** There is also a type of public ownership by the entire *Ummah*. Ahmad narrated from a man from the Muhajireen that the Prophet ﷺ said: **"People share in three things: Water, Pasture lands, and Fire."** There is also, in fact, State ownership. When a Muslim dies with none to inherit from him or her, then his or her property goes to the State Treasury (*Bait ul-Mal*). Whatever is collected of *Kharaj* or *Jizya*, also belongs to the Treasury. Anything that goes to the State Treasury, is for the State to decide upon except for zakat. The State has the right to deal with its property as it sees fit, according to the divine rules Islam has set the means through which the individual, the public and the State can possess property. Any means beyond these is forbidden.

With regard to the disposal of the ownership, the State handles public property on behalf of the people, as it is their representative. Islam has however forbidden the State from exchanging or granting the deed or title of public property. Any disposal of public property, other than these two, are allowed and must be in accordance with the Divine Rules.

The State's and the individual's properties are disposed of according to the rules pertaining to the *Bait ul-Mal* and the rules of transactions, such as selling or pawning. Islam has allowed both the State and the individual to dispose of their properties by exchange or grant in accordance with the divine rules.

The distribution of wealth amongst the people is carried out naturally through the means of ownership and contracts. The natural differences among people in their abilities and in their tendencies to satisfy their needs result in variations in wealth distribution among them. This could result in the possibility of poor distribution where wealth is concentrated in the hands of the few, while the rest of the people are deprived of it. The hoarding of gold and silver, which are the standards of exchange could also occur. Islam has, therefore, forbidden the circulation of wealth amongst the wealthy only. Islam, in fact, obliged that wealth be circulated amongst all the people. Islam also forbade the hoarding of gold and silver, even if a portion of the individual's gold and silver had been given out as *Zakat*.

3
Types of Ownership

Private Ownership

It is part of man's nature to work so as to satisfy his needs and to possess property in order to satisfy these needs and accordingly to strive for this possession. Satisfying man's needs is an inevitable matter that man cannot desist from. In addition to being part of man's nature, man's acquisition of wealth is thus an inevitable matter. Any attempt to prevent man from possessing wealth would be contradictory to his nature and any attempt to restrict his possession to a certain quantity would also be contradictory to human nature. It would, therefore, be unnatural to stand between man and his acquisition of wealth, or to stand between him and his efforts to achieve this acquisition.

This acquisition should not, however, be left to man to achieve, strive for, or dispose of as he wishes, as this would cause evil and corruption resulting in anarchy and disorder. This is inevitable due to the disparity between people in their abilities and in their needs for satisfaction. If they were left to their own devices, only the strong would acquire the wealth and the weak would be deprived of it; the sick and the incapable would perish and the greedy would be excessive. Enabling the people to acquire wealth and strive to achieve it must therefore proceed in a way that guarantees the satisfaction of the basic needs for all the people. It should also guarantee the possibility of people being able to satisfy their desire to acquire luxuries. It would, therefore, be imperative to confine this acquisition to a specific method, in which simplicity is achieved, so as to make the acquisition within reach of all people despite the disparity in their abilities and their needs. This method would also conform to human nature so as to satisfy the basic needs and enable people to fulfil their luxuries. It would thus be imperative for the ownership to be determined in quality and to resist the abolition of ownership, as this contradicts human nature. It is also necessary to resist the confinement

of ownership to specific quantities, as this restricts man's striving to acquire wealth, thus contradicting his nature. The freedom of ownership should also be challenged as it causes evil and corruption resulting in chaotic relationships between people. Islam allows individual ownership and defines its method rather than its quantity, in accordance with human nature. It also organised the relationships between people and thus enabled man to satisfy all of his needs.

Definition of Private Ownership

Individual ownership is a divine rule estimated in terms of asset or benefit, which accordingly enables the owner to utilise the asset and to receive compensation for it. This could be in the form of a person's ownership of, for example, a loaf of bread or a house. He is able through his ownership of the loaf, to eat it or to sell it. Similarly, through his ownership of the house, he is able to live in it or sell it. In both examples, the loaf of bread and the house are assets. The divine rule concerning them is the Law-Giver's permission for man to utilise them by consuming them, benefiting from them or exchanging them. The permission of utilisation entails that the owner is able to eat the loaf and live in the house, as well as being able to sell them. With regard to the loaf, the divine rule is estimated by the asset, which is the permission to consume it. With regard to the house, the divine rule is estimated by the benefit, which is the permission to live in it. Ownership is thus defined as the Lawgiver's permission for utilising the asset. Accordingly, ownership is not established except when the Lawgiver allows it and allows its means. The right of owning the asset does not result from the asset itself, or from its nature by being either beneficial or harmful. Rather it results from the permission of the Lawgiver, and from His ﷻ allowing of the means that permits an asset to be legally owned. By this, the Lawgiver permits the ownership of some assets and prohibits the ownership of others. He also permits some contracts and prohibits others. Thus, the Lawgiver prohibited the ownership of wine and pigs by Muslims, and prohibited the ownership of property acquired through usury and gambling by any citizens of the Islamic State. He permitted selling, thus making it *Halal*, and prohibited usury thus making it *Haram*. He permitted the company of '*Anan* (partnership by body & finance) and prohibited co-operatives, joint stock companies and insurance.

Legal ownership has conditions and its disposal has constraints. Ownership should not interfere with the interests of the community or the interests of the individual who is part of a community and living in a particular society. Utilisation of the owned asset only comes about through the Lawgiver, Who grants it to the individual by following the divine means. Ownership is the Lawgiver's assignment to an individual in the community of a particular thing, which he would not otherwise have the right to own.

However the ownership of an asset is ownership of the asset itself and of its benefit. The real aim of the ownership is to utilise the asset in a manner enjoined by the *Shar'a*.

In light of this definition of individual ownership, it can be understood that there are legal means of ownership. It can also be understood that there are certain methods for the disposal of this ownership and a certain manner in which owned things may be utilised.

Incidents that are considered to be an aggression against the right of individual ownership may therefore be understood. Thus the true meaning of possession which the Lawgiver defined as the striving for a possession as well as its utilisation is understood as the true definition of ownership. In other words, the true definition of ownership indicates the true meaning of ownership.

The Meaning of Ownership

The right of individual ownership is a legal right of the individual who has the right to possess movable and immovable assets. This right is protected and determined by legislation and culturing. The right of ownership, besides being an interest of monetary (financial) value determined by *Shar'a*, indicates that the individual has control over what he possesses. He may dispose of it in the same way that he has control over his optional actions. The right of ownership is thus determined within the limits of the commands and prohibitions of Allah ﷻ.

The determination of ownership is evident in the legal means of possession by which the right of ownership is decided, and in the cases

to which punishments may or may not be applicable. Examples of this are the definition of theft, the definition of robbery and the definition of illegal seizure. This determination is also evident in the right of disposal of the ownership, where some cases of disposal are allowed, and some other cases are prohibited, and in the definition of these cases and the manifestation of their incidents. When Islam determines ownership it does not determine it by quantity but rather by its manner as shown in the following matters:

1. It determined ownership in respect of the means of possession and investing of the property, rather than in the amount of the property owned.
2. It determined the manner of disposal.
3. The fact that the *Kharaji* land title is owned by the State, not the individuals.
4. The fact that individual property forcibly becomes a public property in certain cases.
5. The State grants amounts deemed necessary to those whose means of ownership are insufficient to cater for their needs.

It is inevitable that in order to ensure legal rights of ownership of individual property, a defined authority for him over what he owns should exist. Legislation makes the securing of the individuals right of ownership a duty upon the State. It ensures the respect of ownership, its protection and non-aggression against it. Legislation incorporates deterrents in the form of punishments, which are enforced upon those who infringe on this right, whether by stealing, robbery, or in any other manner. During culturing, emphasis is placed to curtail the desires of people from longing for that which they have no right to own, and that which is owned by others. So the only legal (*Halal*) property is that which falls within the meaning of ownership. And the illegal (*Haram*) property is not considered ownership, nor does it fall within the meaning of ownership.

The Means of Owning Property

Property is anything that can be possessed, whatever its nature. The means of its possession is the cause, which initiated the ownership of the property to the person in the first place. Exchange, in all its forms, is

not considered as one of the means of possessing property. It is a means of possessing commodities through the exchange of a particular commodity of property, where the property was originally in possession, but some of its commodities were exchanged. Investment of property such as the profit from trading, the rental of houses, and the harvest of crops, similarly is not considered as one of the means of possessing property. Though some property has been generated anew by this investment, it was initiated from another property, so investment is from the means of increasing the property, and not the means of possessing the property. The subject at hand is the initial possession of the property, in other words the acquisition of the original property.

The difference between the means of possession and the means of investing already owned property is that possession is the acquisition of the property initially, by acquiring its origin. Whereas investing an owned property is increasing the property that is owned. The property already exists, but is invested and increased. *Shar'a* put rules pertaining to both the owning of property and the investment of owned property. Contracts such as selling and leasing are rules pertaining to the investment of property, and work such as hunting and silent partnership are rules pertaining to the possession of property. Accordingly, the means of ownership are the means of possessing the original property. Whereas the means of investing the owned property are the means of increasing the property, which was already owned through one of the means of ownership.

In order to possess property there are divine causes, which the Lawgiver has confined to particular means. These causes must not be transgressed. The means of possessing property is therefore limited to what the *Shar'a* has laid down. The previously mentioned definition of property as a defined rule (*Hukm Shar'i*) estimated in terms of the asset or benefit, requires that there should be a permission from the Lawgiver in order that possession occurs. In other words, the means permitting possession to occur must exist within *Shar'a*. If the legal means of ownership exists, ownership of the property exists, and if the legal means of ownership are absent, then the ownership of property does not exist, even if an individual actually possessed it. Ownership is thus possession of property by divine means permitted by the Lawgiver. *Shar'a* has determined the means of ownership by specific cases which it made clear in a limited,

rather than unrestricted form. *Shar'a* has laid down these means in clear general guidelines. These comprise of numerous sections, which are branches of these means and clarifications of their rules. *Shar'a* did not characterise the means by certain general criteria, so no other general means can be included through analogy. This is because the renewed needs are only in the generated properties not in the transactions; i.e. it is not in the system that governs the relationship, rather it is in the subject matter of the relationship. Therefore it is necessary to confine transactions to specific cases which apply to the renewed and various needs, and to the property as a property, and to the work as work. This approach determines individual ownership in a manner that agrees with man's nature and organises this ownership so as to protect the society from the dangers that would result from leaving it unrestricted. The desire to own individual property is an aspect of the survival instinct just as marriage is an aspect of the procreation instinct, and worship rituals are an aspect of the sanctification instinct. If these aspects were left free to be satisfied in any way this would lead to anarchy and disorder and to abnormal or wrong satisfaction. It is necessary, therefore, to define the manner by which man acquires property to prevent a minority of the *Ummah* from controlling her by means of property, that the majority of people are not deprived of satisfying some of their needs: and that property is not sought for its own sake only, lest man loses the pleasant life, and also to prevent the obtaining of property for the purpose of hoarding. Accordingly, it is necessary to define the means of possession. Through examination of the divine rules (*Ahkam Shari'ah*) which allow man to possess property, it becomes apparent that the means of possession are limited to five which are:

a. Work.
b. Inheritance.
c. Obtaining of property for the sake of life.
d. The State granting of its properties to the citizens.
e. Properties which the individuals take without exchange of property or work.

4
The First Means of Ownership: Work (*'Amal*)

Close examination of any of the property assets, whether they exist naturally, like a mushroom or whether they exist by man's effort, such as a loaf or a car, clearly suggests that their acquisition requires work.

The term *'Amal* (work) has a wide meaning encompassing numerous types and forms and has various results, therefore the *Shar'a* (divine legislation) did not leave the word *'Amal* in its absolute form without definition. It also did not define *'Amal* in a general form but mentioned certain specific forms of work. It demonstrated the types of work and those that are accepted to be means of ownership. By examining the divine rules that describe work, it appears that the types of legal work, which are a valid means of possessing property, are the following:

1. Cultivation of unused (dead) land.
2. Extracting that which exists inside the earth, or in the air.
3. Hunting.
4. Brokerage (*Samsara*) and Commission Agency (*Dalala*).
5. Partnership of body and capital (*Mudharaba*).
6. Sharecropping (*Musaqat*).
7. Working for others for a wage.

Cultivation of Barren Land: *(Ihya ul-Mawat)*

Barren land (*Mawat*) is land, which has no owner, and nobody benefits from it. Its cultivation means planting on it, afforestation or building upon it. In other words using it in any form that means cultivation (*Ihya*). The cultivation of land by a person makes it his property. The Messenger

of Allah ﷺ said: **"Whoever cultivated a dead land, it becomes his."** He ﷺ also said: **"Whoever encircled a land by a fence it becomes his."** And he ﷺ said: **"Whoever gets his hand over something ahead of any other Muslim, it is his."** There is no difference in this matter between the Muslim and the dhimmi (non-Muslim citizen of the Islamic State), because the *Ahadith* are absolute in their form without restriction, and because what the *Dhimmi* takes from inside the valleys, forests and the tops of the mountains is his property, and it is not allowed to be taken away from him. It is just as appropriate for the dead land to be his property. This is general in every land, whether it is *Dar ul-Islam* or *Dar ul-Harb*, and whether it was *'Ushri* or *Kharaji* land. However, the condition of possession is to work upon the land within three years of taking possession of it, and to continue this cultivation by using the land. If someone did not use it at all during the first three years of his possession, or if he neglected it for three continuous years later on, then he would lose his right of its ownership. 'Umar ibn Al-Khattab said: "The one who circles a land has no right in it after three years." 'Umar made this Statement and enforced it in the presence of the Sahabah, who made no objection, confirming their *Ijma'a* (consensus).

Extracting that which exists inside the earth

Another type of work is extracting that which exists inside the earth and which is not one of the necessities of the community, namely the hidden treasure (*Rikaz*). This is not a right for Muslims collectively, as is stated in *Fiqh* terminology. The one who extracts a treasure possesses four-fifths of it and gives the other fifth as *Zakat*.

However if it was of the community necessities and a right for the Muslims collectively, then it belongs to the public property. What defines this matter precisely is that if the treasure was hidden in the earth by man's action or if it was of too small a quantity to become a need for the community, then it would be a treasure (*Rikaz*). While that which exists originally inside the earth and is needed by the community is not *Rikaz* but it is a public property. That which exists originally inside the earth and that the community has no need for, such as stone quarries, from where building stones and other such things are produced, is not *Rikaz* nor a public property, rather it belongs to the individual property. The

possession of the *Rikaz* and giving out a fifth of it as a *Zakat*, is proven in the hadith where 'Amr ibn Shu'aib narrated in al-Nisai from his father, from his grandfather, who said: **"The Prophet of Allah ﷺ was asked about Luqatah (a thing picked from the ground) and he ﷺ said: 'If it was picked from a used road or an inhabited village, you have to describe it and announce it for one year: If its owner identified it, it is restored to him, otherwise it is yours. But if it was not picked from a used road or an inhabited village, then you have to pay a fifth of it and of the treasure *(Rikaz)*.'"**

Extracting that which exists in the air, such as oxygen and nitrogen is treated as that which is produced from inside the earth. Anything created by Allah ﷻ which the *Shar'a* made *Mubah* and did not restrict the use of it is also treated similarly.

Hunting

Another type of work is hunting. Fish, pearls, corals, sponges and other prey are possessed by those who hunt them, as in the case of birds, animals and other things hunted on land, which are also the property of those who hunt them. Allah ﷻ said:

أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَاعًا لَكُمْ وَلِلسَّيَّارَةِ وَحُرِّمَ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا

"Lawful to you is (the pursuit of) water-game and its use for food-for the benefit of yourselves and those who travel, but prohibited is (the pursuit of) land-game as long as you are in a state of Ihram." [Al-Ma'idah: 96]

And He ﷻ said:

وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ

"If you broke your State of Ihram you are allowed to hunt." [Al-Ma'idah:2]

And He ﷺ said:

يَسْأَلُونَكَ مَاذَا أُحِلَّ لَهُمْ قُلْ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَمَا عَلَّمْتُمْ مِنَ الْجَوَارِحِ مُكَلِّبِينَ تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ فَكُلُوا مِمَّا أَمْسَكْنَ عَلَيْكُمْ وَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهِ

"They ask you what is lawful to them (as food). Say: lawful to you are (all) things good and pure (tayyebat), and what you have taught the beasts and birds of prey, training them to hunt in the manner directed to you by Allah. Eat what they catch for you, but pronounce the name of Allah over it…" [Al-Ma'idah: 4]

And Abu Tha'alaba al-Khashni narrated, **"I came to the Messenger of Allah ﷺ and said: 'O Prophet of Allah! We are in a hunting land, I hunt by my arrow and by my trained dog and with my untrained dog, so tell me which of these is allowed for me?'** He ﷺ said: **"As for what you mentioned, that you are in a hunting land, so what you hunted by your arrow and mentioned on it the name of Allah, eat of it, and what you hunted by your trained dog, and mentioned on it the name of Allah, eat of it, and that which you hunted by your untrained dog and you got it before its death and slaughtered it, eat of it."'** (narrated by An-Nisai and Ibn Majah).

Brokerage and Commission Agency (Samsara and Dalala)

A broker is a person who is employed by other people to buy and sell on their behalf. A commission agent is employed in the same way. *Samsara* (brokerage) is a type of work by which property is legally possessed. Abu Dawud, in his *Sunan*, related that Qais ibn Abu Ghurza al-Kanani said: "We used to buy the *Awsaq* (loads or freight) in Madinah and call ourselves brokers. The Messenger of Allah ﷺ came and called us with a name which was better than ours. The Messenger of Allah ﷺ said: **"O you merchants, trading is usually blemished with foolish talk and swearing, so blend it with sadaqah."** This means that the trader exceeds the limit when describing his goods to the extent that he talks foolishly, and he may be at risk by swearing to promote his goods. It is

therefore preferable to give sadaqah in order to remove the effect of his actions. The work of selling and buying which the person is contracted for, should be defined, whether by the goods or by the period. So if he hired a person to sell or buy for him a certain home or property, this would be legally valid, or if he hired him to sell or to buy for him during one day it would be legally valid as well. But if he hired him to do an unknown work it would be legally invalid.

Brokerage does not apply to the actions of some employees. For example, a merchant sends an agent to buy for him goods from another merchant, who gives him money in return for buying the goods from him. The agent does not deduct this amount from the price of the goods but rather takes it for himself as commission. This is not considered by *Shar'a* as brokerage, because the employee is an agent for the merchant who employed him, so whatever is reduced from the price is for the merchant, not the agent. It is thus prohibited for the agent to take it as it belongs to the buyer, unless he permits it, in which case it is allowed for him.

Similarly if a person sent his servant or friend to buy something for him and the seller gave him some property, namely a commission in return for buying from him, he is not allowed to take it because it is not brokerage, but a theft stolen from the property of the man who sent him. This is because this property belongs to the person who sent him to buy, and not to the person who was sent.

Mudharaba

Mudharaba is where two persons (or more) participate in trading, where the capital comes from one of them and the work from the other. That is, the body of one person enters into partnership with the property of another person. This means that the work will be carried out by one of them and the other will provide the property. The two partners agree on a certain share of the profit. An example of this is when one of them provides one thousand pounds and the other person works with it, and the profit is divided between them. The money must be handed over to the body partner, who is given a free hand over the money, because *Mudharaba* requires the handing over of the property to the body partner

(*Mudharib*). The body partner has the right to stipulate upon the property owner that he has a third, or half of the profit, or whatever they may agree on together as a defined portion of the profit. This is because the body partner (*Mudharib*) is entitled to the profit due to his work. It is thus allowed for the partners to agree on the profit of the *Mudharib* whether it is little or great. So *Mudharaba* is a kind of work which is a legal means of ownership. The *Mudharib* thus possesses the property, which he profited from via *Mudharaba* due to his work in accordance with what was agreed.

Mudharaba is a kind of company, because it is a partnership of a body and property. The company is one of the transactions which the *Shar'a* has allowed. Abu Hurairah (ra) said that the Messenger of Allah ﷺ said: **"Allah says: 'I am the third of the two partners unless one of them betrays his companion, so if one of them betrays his companion I withdraw from them.'"** The Prophet ﷺ said: **"The hand of Allah is on the two partners unless they betray each other."** Al-Abbas ibn Abdul-Muttalib (ra) narrated that, when he handed a property as *Mudharaba*, he used to stipulate on the *Mudharib* not to travel with it by the sea, not to descend a valley nor to trade with live things, otherwise he would have to guarantee losses incurred. The Prophet of Allah ﷺ became aware of that and He approved of it. The companions (ra) have agreed unanimously that *Mudharaba* is allowed. 'Umar ibn Al Khattab (ra) used to hand over the orphans' property for *Mudharaba*. Uthman ibn Affan (ra) handed some property to a man as *Mudharaba*. So the *Mudharib* gains a property for himself by working with the property of another person. The *Mudharaba* by the *Mudharib* is thus work and one of the valid means of ownership. However for the owner of the property it is not a means of ownership, rather it is a means of investing the ownership.

Share Cropping (Musaqat)

One of the kinds of work is the *Musaqat*, where one person hands over his trees to another person in order to irrigate them and tend to them in return for a defined portion of their fruit. It was called *Musaqat* (literally meaning irrigation) because it is related to the work of irrigation, where the trees of the people of Hijaz mainly needed irrigation for which they used to draw water from the wells. *Musaqat* is one of the types of

work which *Shar'a* allows. Muslim has narrated that Abdullah ibn 'Umar (ra) said: **"The Prophet of Allah ﷺ contracted the people of Khaybar over half of what they produce of fruit crops and plants."** *Musaqat* is allowed in palm trees and vines on a known part of the crops, which are to be given to the worker. This applies only to the trees that have fruit. The trees which either have no fruit (crops) such as the willow, or have fruit not sought after as the pine and cedar, are not allowed for *Musaqat*, because *Musaqat* is for a part of the fruit (crops) and these type of trees has no fruit sought after. But those trees whose leaves are sought after such as the mulberry and the rose, *Musaqat* is allowed in them, because their leaves are equivalent to fruit. This is harvested annually and it is possible to collect it and enter into *Musaqat* for a part of it, thus invoking the same rule as fruit.

Employing an Employee (Worker)

Islam allowed the individual to employ employees and labourers i.e. workers to work for him. Allah ﷻ said:

أَهُمْ يَقْسِمُونَ رَحْمَةَ رَبِّكَ نَحْنُ قَسَمْنَا بَيْنَهُمْ مَعِيشَتَهُمْ فِي الْحَيَاةِ
الدُّنْيَا وَرَفَعْنَا بَعْضَهُمْ فَوْقَ بَعْضٍ دَرَجَاتٍ لِيَتَّخِذَ بَعْضُهُمْ
بَعْضًا سُخْرِيًّا

"It is We who portion out between them their livelihood in this world, and We raised some of them above others in ranks so that some may employ others in their work...." [Az-Zukhruf: 32]

Ibn Shihab narrated that Urwah ibn Az-Zubair said that Aisha (ra), the mother of the believers said: **"The Messenger of Allah ﷺ and Abu Bakr hired a man from Bani ad-Deel as an experienced guide when he was of the same deen as the kuffar of Quraish. They handed to him their two female riding camels, and fixed an appointment with him to meet them at the cave of Thawr after three nights, at the morning of the third night with their two camels."**

Allah ﷻ also said:

فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ

"If they (the mothers) suckled for you, give them their wages" [At-Talaq: 6].

Bukhari narrated from Abu Hurairah who stated that the Prophet ﷺ said: **"Allah azza wa jalla said, 'I will be the opponent of three (types of) people on the Day of Judgement: A man who gave (a word) in My name then he deceived, a man who sold a free person and devoured his price, and a man who hired a worker where he received (the work) from him in full and did not give him his wage.'"** Hiring is delivering a benefit by the hired person to the employer and delivering property from the employer to the employed. It is thus described as a contract to provide a benefit in return for a recompense. The contract of hiring a worker is either based on the benefit of the work carried out by the worker or on the benefit of the worker himself. If the contract is based on the benefit of the work then the contracted matter is the benefit produced by the work, like hiring the craftsmen of certain works, such as hiring the cleaner, the blacksmith and the carpenter. However, if the contract is based on the benefit of the person himself, then the contracted matter is the benefit of the person, like hiring of servants and other similar types of workers. In such a contract the worker works for the employer only for a certain period of time, such as the person who works in a factory, a garden or a farmer, in return for a certain wage. Civil servants (Government employees) fall in this category. Alternatively, he may have a certain job for anyone where he works in return for a wage for the work done. Examples of such jobs are carpenters, tailors and shoemakers. The first type of labour is private labour, while the second one is common labour.

5 The Work of the Employee (Worker)

Definition of the Work

Hiring involves utilising the benefit of the hired thing. With regard to the worker, hiring is utilising his effort. It is necessary in hiring a worker, to define the work, the period of work, the wage and the effort. The work has to be defined so as not to become unknown, because hiring based on unknown work is invalid (**Fasid**). It is also necessary to define the period of work, such as daily, monthly or yearly. Similarly, the wage of the worker has to be defined. Ibn Mas'oud said: The Prophet ﷺ said: **"If any one of you employed a worker then he has to inform him of his wage."** It is also necessary to define the effort that the worker has to expend. Accordingly it is not allowed to demand of the worker work that is beyond his capacity. Allah ﷻ said:

لا يُكَلِّفُ اللَّهُ نَفْسًا إِلاّ وُسْعَهَا

"Allah burdens not a person beyond his scope." [Al-Baqarah: 286]

The Prophet ﷺ said: **"If I commanded you of something, do of it as much as you can",** as narrated by Bukhari and Muslim from Abu Hurairah. The worker should not be asked to undertake effort except that which is within his ordinary capacity. As a real scale cannot measure effort, defining the number of working hours every day is the best possible measure. In addition the type of work has to be defined as well, such as digging hard or soft soil, forging a metal or cutting stones. This also determines the amount of effort. The work would have thus been defined by stating its type, duration, wage and the effort spent in it. When *Shar'a* allowed employing a worker, it laid out provision for defining his work in terms of the type, duration, wage and effort. The wage received

by the worker, in return for his execution of the work, is the property he accrued as a result of the effort he spent.

The Type of Work

It is permissible to be contracted to undertake every lawful (*Halal*) form of work. Examples are hiring for the purpose of trading, farming, industry (manufacturing), serving and deputation. In judicial matters one may be hired to convey the response of a claimant or defendant, collect the evidence and deliver it to the judge, claim rights or settle disputes among people. Also one can be hired for drilling wells, building, driving cars and aeroplanes, printing books, copying the *Mushaf*, and carrying passengers, among other lawful works.

Hiring could be for a specific job, or for doing work of a specific description. If hiring is contracted for a particular job for a certain employee, for example if Khalid hired Mohammed to sew a particular dress or to drive a particular car, then Mohammed should do the work and he is not allowed at all to authorise another person to do the job on his behalf. If Mohammed became sick or was incapable of doing the work, no other person is allowed to do it instead of him because the employee had been designated. If the particular dress was destroyed or the specified car had broken down, Mohammed would not be obliged to work on other than those two, because the type of work had been defined.

However, if hiring was contracted over something which is described in one's responsibility, or a described type of employee, or a certain job, the rule is different. In these cases, the employee can do the work and he is allowed to delegate a person to do the job on his behalf. If he becomes sick or is unable to do the work, he is bound to delegate a person to do the job instead of him. He is also under duty to drive any car or sew any dress provided by the employer as long the contract describes such work. This is because the definition was not for the work itself, but is for its type, so any work on anything is binding as long as it is of the same type as the contract specified. In this case its definition would be by description and not by naming it specifically, leaving the choice for the employee to perform anything of the contracted type.

Defining the type of work includes describing the worker who will do the job so as to demonstrate the nature of his effort, such as an engineer. Its description also includes the work, which has to be performed. This explains the nature of the effort spent in it, such as in the example of drilling a well. Defining the work by such description is similar to defining it by naming it. It is, therefore, acceptable to define the work by describing it or to define it by specifically naming it. It is enough to be due in one's responsibility, though unseen, as if it is present and tangible. So, just as it is allowed to hire a named engineer, specifically defined, it is allowed to hire an engineer of a certain description. Similarly it is permissible to hire a tailor to sew a specific shirt and it is also allowed to hire a person to sew a shirt of a certain description.

If a person accepted to do some work, he is allowed to give it to another person with a lesser wage and thus profit by the difference. This is because he is allowed to hire others to do the work for any wage. What business people, like tailors and carpenters, do in terms of hiring workers to work for them, and what contractors do in terms of hiring people to do work they themselves have been contracted to perform, are all allowed, regardless of what they pay their employees. This is still hiring whether for performing specific works or for a certain period. All such workers are a type of private labour, which is lawful in *Shar'a.*

For a person to hire workers on condition that he takes a part of their wages, or appoints himself as a supervisor over them in return for a part of their wages, is not allowed. This is because he would have then usurped a part of the wages assigned to them. Abu Dawud narrated from Abu S'aid al-Khudri that the Prophet ﷺ said: **"Beware of the apportionment. "We said: 'O Messenger of Allah, what is the apportionment?'** He said: **"A thing agreed among people, but a part is reduced of it.""** In another narration from Ataa, the Prophet ﷺ said: **"That a person is in control over a group of people so he takes from their shares."** So if a contractor made an agreement with a person so as to bring him one hundred workers each for one dinar a day, and he gave each of them less than one dinar, this would not be allowed. The amount which he contracted for, is considered a defined wage for every one of them. If he deducted from it he would have taken from their rights. If however, he was contracted to bring one hundred workers without mentioning their wages, then the person is allowed to give them

less than the contracted amount because he would have not reduced their assigned wages.

It is also a condition to define the type of work in such a manner that it becomes known, so that hiring is concluded over a known thing. This is because hiring for unknown work is invalid. So if a person told a worker that he had been hired to carry some particular boxes of goods to Egypt for ten dinars, then the hiring is valid (lawful). It is valid also if he said he had been hired to carry them for one dinar per ton, or if he had been hired to carry them, one ton for one dinar, and anything over that would be calculated. This will be valid as long as he used words that indicated that he should carry them all. But if he said to carry them, one ton for one dinar, and whatever is extra is to be calculated accordingly, meaning whatever extra was carried of the remaining ones, this is not valid, because some of the contracted matter is unknown. However, if he asked him to carry every ton for one dinar, this is valid, just as if he had hired him to draw for him water, every metre for one pence, which is allowed. So it is a condition that hiring be about a known thing. If however ignorance is involved, the hiring becomes invalid.

Duration of the Work

In some types of hiring, it is necessary to mention only the type of work hired for, such as sewing, or driving a car to a named place, without mentioning a duration. In other types of hiring, it is necessary to mention only the duration of hiring, without mentioning the quantity of work. An example of this is to hire somebody for a month to dig a well or a canal, which does not need a quantity defined, only that the digging should be done during this month, whether little or much. In other types, the duration and the type of work have to be mentioned, such as building a house, constructing an oil refinery and the like. So every work that needs the time period to be defined, the time period has to be mentioned, because the nature of the hiring has to be known. Not mentioning the time duration in some works makes the hiring unknown, and if the hiring is unknown it becomes invalid. If the hiring was contracted over a certain time period such as one month or one year, then no one of the two parties is allowed to break the contract of hiring until the time period has ended. If a worker was hired for a repeated time duration, such as twenty

dinars monthly, then he has to be involved in the contracted work every month and the duration must be mentioned in the hiring contract. It is not necessary that the period of hiring (i.e. the month) has to start immediately after the contract. So it is allowed to hire a person in *Muharram* to work in *Rajab*. If the duration was mentioned in the contract or it was necessary to mention it so as to remove uncertainty, then this time period has to be defined in time units such as minutes, hours, weeks, months or years.

Wage for Work

It is stipulated that property paid in return for hiring should be known by such witness and description so as to remove any uncertainty about it. Because the Prophet ﷺ said: **"Whosoever hired a person he has to inform him about his wage."** Recompense for hiring is allowed to be monetary, non-monetary, property or a benefit. Anything that is allowed to be a price is allowed to be a recompense, whether it was a commodity or a benefit, on condition that it is known; but if it was unknown it would be invalid. So if a person was hired to reap a harvest for a part of the reaped harvest as a wage it is not allowed because the wage is unknown. While if he is hired for one *Sa'a* (a cubic measure) or two, it is allowed. The worker is allowed to be hired also for his food and clothing, or can be given a wage together with his food and clothing, because this is allowed in the case of the woman who suckles the infant. Allah ﷻ said:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

"The duty of feeding and clothing and nursing mothers in a seemly manner is upon the father of the child" [Al-Baqarah: 233]

So they were entitled to their provision and clothing as a wage for suckling. If this was allowed in the case of the nursing mother then it is allowed in other cases because such cases are all considered as questions of hiring.

In short, the wage should be defined in a manner that removes any ignorance about it, so that it can be duly fulfilled without dispute, because all contracts are originally laid down to remove disputes among people. Before starting the work, the wage has to be agreed upon, and it is disliked (*Makruh*) to use a worker before agreeing with him over his wage. If the hiring over a work was contracted, the worker is appropriated the wage by the force of the contract, but it is not obligatory to hand it over to him until the work is finished. Thereafter, it should be immediately handed over to him, due to the saying of the Prophet ﷺ: **"There are three persons of whom I am their opponent on the Day of Judgement: A man who gave (a word) in my name then he deceived, a man who sold a free person and devoured his price, and a man who hired a worker where he received (the work) from him in full and did not give him his wage",** narrated by Bukhari from Abu Hurairah. But if there was a condition to delay the wage, then it should be delayed to its fixed time. If the condition states that the wage is in instalments daily, monthly, or less, or more than that, then the fixed time is that which the two parties agreed upon. It is not necessary that the employer actually receives the benefit in full, rather it is enough that the worker makes himself available to be used, so that the wage becomes due from the employer. So, if a person hired a private worker to serve him in his house, and the worker came to their house and put himself at his disposal, then he deserves the wage by the end of the time period in which he could have been used by the employer. Even though the contract is for a service which may not have been fully received by the employer, enabling the employer to receive it even if he did not, this is enough for the worker to deserve the wage. This is because the shortcoming is from the side of the employer rather than the employee. However, for the common employee, if he was employed to work on a certain thing, then he would either do it while it is kept under his authority, like the painter who paints in his own shop, and the tailor who works in his own shop. So his responsibility to do the work will not finish until he has handed it back to the client, and he does not deserve his wage until he has handed it over after completion. This is because the thing contracted upon is under his authority, and he would not be cleared of responsibility until he hands it over to the client. Likewise, the work may be contracted to be done within the domain of the employer, for example if the employer brought the tailor or the painter to his house to sew or paint for him, then the employee would be cleared of the responsibility of the work and deserve his wage once he had finished it, because he was under the authority of the employer, and thus the work was handed over immediately.

The Effort Spent in the Work

The contract to hire an employee applies on the benefit of the effort he expends; and the wage is evaluated in terms of this benefit. The effort itself is neither the measure of the wage, nor the measure of the benefit, otherwise the wage of the stonemason would be greater than the wage of the engineer because the stonemason's effort is greater; and this is contrary to the reality. Therefore, the wage is a recompense for the benefit and not for the effort. Besides that, the wage differs and changes according to the type of employee, and it also changes for the same employee according to the difference in the standard of the benefit, but not according to differences in effort. The contract in both cases was over the benefit of the employer, not over the employee's effort. So what does matter is the result, whether it was of different employees in different works, or of different employees in the same work; and there is no consideration given to the effort at all. It is true that the result of the work is the fruit of the effort, whether it was in different works, or in the same work done by different people, but what is intended is the result, not only the effort, even though this is noticed in the evaluation of the wage. So if a person was hired for building, then the wage should be evaluated by the time or by the work. If it was evaluated by the work, then the benefit will obviously be manifested in the location of the building, its length, width, thickness and the material of the building etc. If the work was evaluated by time, then the benefit of the work usually increases as the time increases, and decreases as the time decreases. Thus the description of the work together with the mentioning of the time is the measure of the benefit. If it is evaluated by time, the person should not work more than his usual capacity, and should not be obliged to do unusually hard labour.

The Ruling Regarding Hiring Over Prohibited Benefits

In order that hiring be legally valid, the benefit must be permitted (*Halal*) in nature. So the employee should not be hired for doing something which is prohibited. Accordingly a worker should not be hired to carry alcohol to one who buys it, or to press it. Nor should he be hired to carry pigs or carrion. At-Tirmidhi narrated from Anas ibn Malik, who said: **"The Messenger of Allah ﷺ cursed ten types of people regarding alcohol: its presser, the one who asks for it to be pressed, its drinker, its carrier, the one to whom it is carried, the one who serves it, its seller, the one for whom it is sold, its purchaser and the one for whom it is purchased."** Hiring is also not allowed over any work of usury, because it is a hiring over a prohibited benefit, and because ibn Majah narrated from ibn Mas'oud **that the Prophet ﷺ cursed the one who takes usury, his agent, its two witnesses and its recorder (clerk).** The employees of banks and coinage (minting) departments and all the organisations that deal with usury have to be examined. If the work they were hired to do is a part of the usury work, whether the usury is the product of that work exclusively, or whether it is produced by that work along with others, Muslims are prohibited to perform such works. This includes the manager, accountants and auditors and every work that provides a benefit connected with usury, directly or indirectly. But the works that are not connected with usury directly or indirectly, such as the porter, the guard, the cleaner and the like, these works are allowed, because such work is hiring on an allowed benefit, and because what applies on the recorder and the witnesses of usury, does not apply to them. Similar to the employees of banks are government employees who are involved in deals with usury, such as employees who work in preparing loans with interest to farmers, and Treasury employees who are involved in usury works, and the employees of the orphans departments which lend property with interest. All these are prohibited jobs; anyone who is involved with them is committing a great sin, because it applies to him since he is the recorder or the one who witnesses usury. Similarly it is prohibited upon a Muslim to engage in any work prohibited by Allah ﷻ.

With regard to the work, whose profit or association in it, is prohibited because it is legally invalid such as insurance companies, share holding companies and co-operative associations and the like, they have to be

examined. If the work that the employee performs is illegal, or it is of an invalid (*Batil*) or defective (*Fasid*) contract, or results from them, a Muslim is not allowed to handle it, because a Muslim is not allowed to deal with invalid or defective contracts or with the actions which result from them. He is not allowed to deal with any contract or action which disagrees with the *Hukm Shar'i* (divine rule), so it is prohibited for him to be hired for involving in them. This is like the employee who records insurance contracts though he dislikes them, the one who negotiates the insurance terms, or the one who accepts the insurance. Similarly is the case of the employee who distributes the profit of the co-operative associations according to the member holdings, the employee who sells company shares or who works in share stock accounting, and also the employee who advertises for the co-operative associations and the like. All employees of companies, whose work is legally allowed to be performed, are allowed to be employed in such positions.

If a person is not legally allowed to perform a work for himself then he is not allowed to be an employee to do it, and he is not allowed to be hired to do it. So actions which are prohibited to be conducted, the Muslim is prohibited from hiring others to it or to be hired, himself, to do them.

The Ruling of Hiring Non-Muslims

With regard to the employer and the employee, it is not a condition for either of them to be a Muslim. So a Muslim is absolutely allowed to hire a non-Muslim, by the evidence of the action of the Prophet ﷺ and the consensus of the *Sahabah* at the hire of non-Muslims in any allowed (*Mubah*) action, including the works of the State. The Prophet ﷺ hired a Jew as a clerk, and another Jew as an interpreter, and he hired a polytheist (*Mushrik*) as a guide. Abu Bakr and 'Umar hired Christians as accountants for the funds. As it is allowed for the Muslim to hire a non-Muslim, the Muslim too is allowed to be hired by a non-Muslim to perform a permissible action. But prohibited work must not be performed whether the employer is a Muslim or a non-Muslim. So the Muslim is allowed to be hired by a Christian to work for him. This must not include work where a Muslim is being subjugated to the *Kafir* in order for him to be humiliated. Rather it is the hiring of himself to another person, on a

matter that is allowed, without belief in Islam being a condition for the employer or the employee. Ali (ra) hired himself to a Jew for drawing water for him at a wage of one date for every bucket of water, and he informed the Prophet ﷺ about it, and he did not prohibit it. Also because hiring is a contract of exchange that does not include the humiliation of the Muslim. However, for work which is meant to bring us nearer to Allah the Supreme, it is a condition that the person hired be a Muslim. Examples include leading the prayer, performing the *Adhan*, pilgrimage, distributing *Zakat* and teaching Qur'an and the *Hadith*. Because these are not legally valid except from a Muslim, so no one is hired to perform them except a Muslim. The reason (*Illah*) in these actions is that they are not valid except from a Muslim. But if the works which are meant to bring us nearer to Allah ﷻ are valid to be performed by a non-Muslim, then it is valid to hire him for doing them. In summary: if the works are considered by the employer as a sort of seeking the nearness to Allah, but are not considered as such by the employee then they have to be examined. If they are not valid except from the Muslim such as judicial acts (*Qadha'a*), then the non-Muslim is not allowed to be hired for performing them. But if it was valid for the non-Muslim such as fighting, then he is allowed to be hired for doing that. So the *Dhimmi* (non-Muslim) is allowed to be hired for fighting and his wage is paid from the *Bait ul-Mal*.

Hiring Someone to perform Worships and Public Services

The definition of hiring as a contract stipulating the recompense for the fruits of labour, and stipulating that the benefit is something the employer can receive fully, leads us to understand that hiring is allowed for every benefit which the employer can receive from the employee fully. This could be the benefit of a person like a servant or the benefit of the work of a craftsman, unless a divine evidence has been mentioned that prohibits such benefit. This is because things are originally allowed and benefit is one of those things. It is untrue to say here that this is a contract or a transaction which should be originally restricted by *Shar'a* rather than allowed. This is untrue because the contract is the hiring itself, not the benefit. The benefit is the matter over which the transaction is concluded and over which the contract is applied, and thus the benefit is not a transaction or a contract. Therefore, hiring is allowed over all

benefits when there is no prohibition mentioned regarding them, whether there is a text allowing them or not. So the person is allowed to hire a man or a woman to type for him on a typewriter, certain pages for a certain wage because this is a hiring over a benefit for which no prohibition is mentioned. So hiring over it is allowed, even though there was no mention of a text to allow it. It is also allowed to hire a person who measures and weighs for a certain work in a certain time-period. Abu Dawud narrated in the hadith of Suwaid ibn Qais, who said: **"The Prophet ﷺ came to us (in the market) and he bartered with us and we sold to him. And there was a man who was weighing for a wage. The Prophet ﷺ then said: 'Measure and out-weigh (the scale of balance).'"** So this hiring is allowed and there is a text that allows it. But as for the worships, whether they are *Fard* or *Nafilah*, they have to be examined. If their benefit does not extend to other than the person who performs them, such as performing the pilgrimage for himself, and paying his own *Zakat*, then he is not allowed to receive a wage for it because the wage is a recompense for a benefit and there is no benefit in these matters for other than himself. Accordingly, hiring him on these matters is not allowed, because they are *Fard* upon him. But if the benefit of the worship goes beyond the one who performs it, then hiring over it is allowed. Examples include making *Adhan* for others and leading the others in prayer or hiring a person to perform *Hajj* on behalf of a dead person or a person to pay his *Zakat* on his behalf. All these things are allowed because it is a contract over a benefit for recompense. The wage in these matters is recompense for benefit, which was accomplished by another person, so the hiring was allowed. In regard of what At-Tirmidhi narrated from Uthman ibn Aby al A'as, he said: **"The last thing the Prophet ﷺ commanded me to do is to use a Muadhin (caller to prayer) who does not take a wage for performing his adhan."** In this *Hadith* the Prophet ﷺ forbade using the *Muadhin* who takes a wage as a *Muadhin* for him, but he did not forbid the *Muadhins* from taking a wage. This indicates that there are *Muadhins* who take a wage and others who do not take a wage. So the Prophet ﷺ forbade him from taking a *Muadhin* from those who take a wage. This prohibition indicates alienation from taking a wage over *Adhan*, which implies the dislike of taking a wage over *Adhan*. However, this does not indicate the prohibition of taking a wage over *Adhan*; rather it indicates that it is allowed but with dislike.

With regards to education, a person is allowed to hire a teacher to teach

his children or himself or to teach anyone he likes. This is because, teaching is an allowed (*Mubah*) benefit, for which it is allowed to take recompense for, so hiring for it is allowed. And *Shar'a* has allowed taking a wage for teaching the Qur'an, so taking a wage for teaching other than the Qur'an is allowed by greater reason. Bukhari narrated from ibn Abbas from the Prophet of Allah ﷺ that he said: **"The most worthy thing to take a wage for is the Book of Allah."**

Bukhari also narrated from Sahl ibn Sa'ad As-Sa'idi that the Prophet ﷺ married off a woman to a man for what he knew of the Qur'an i.e. to teach her what he knew of the Qur'an. There was a consensus of the companions as well that it is allowed to take a provision from *Bait ul-Mal* for teaching; therefore it is allowed to take a wage for it.

It was narrated from Ibn Aby Sheeba from Sadaqa al-Dimashqi from Al-Wadhiya ibn' Ata'a, that he said: "There were three teachers in Madinah who used to teach the youngsters, and 'Umar ibn Al-Khattab used to provide every one of them with fifteen (*Dinars*) every month." All of this indicates that taking a wage for teaching is allowed. With respect to the *Ahadith* which came in this regard to discourage taking a wage, they were focused on discouraging the taking of a wage for teaching the Qur'an, rather than denying the hire of people to teach it. They all indicate the dislike of taking a wage for teaching the Qur'an, rather than forbid the hiring to teach it. Dislike of taking the wage does not deny its permissibility, so it is disliked to take a wage for teaching Qur'an, yet it is allowed to hire people for doing so.

Concerning the hiring of the doctor, it is allowed because it involves a benefit which the employer can receive, but it is not allowed to hire him for curing, because that would be hiring over an unknown matter. It is allowed to hire the doctor for examining a patient because this would be a known benefit, and it is allowed to hire the doctor for serving the patient during certain days, as this would be a defined work. It is also allowed to hire the doctor to treat the patient, because his treatment is known in a manner that removes ignorance, even if the type of disease is not known, since it is enough for it to be known that the patient is sick.

The permissibility of the hiring of a doctor is established because medicine is a benefit which the employer can receive, so hiring over it is

allowed. Also, it was mentioned that the Prophet ﷺ indicated the allowance of hiring for medicine. Bukhari narrated from Anas that he said: **"The Prophet ﷺ called Abu Taeeba to cup/bleed** *(Ihtajama)* **him then he gave him two Sa'a (cubic measures) of food and he recommended to his master to reduce work on him."** Cupping at that time, was a medication with which people were treated, so taking a wage for doing it indicated the allowance of hiring a doctor. In regard of the saying of the Prophet ﷺ which Tirmidhi narrated from Rafi'a ibn Khadeej that **"the earning of the cupper is filthy** *(Khabeeth)*,**"** this does not indicate the forbiddance of hiring a cupper. Rather it indicates the dislike of earning by cupping, though it is *Mubah* (allowed) by the evidence that in the *Hadith* narrated by Muslim from M'adan ibn Aby Talha, the Prophet ﷺ described garlic and onion as evil, though they are allowed. All this is in regard of the worker whose service is private.

But regarding the worker whose benefit is common, his services are considered to be of the interests which the State has to supply for the people. This is because every service whose benefit goes beyond the individuals to the community, and the community was in need of it, then this service would be of the public interests which the *Bait ul-Mal* has to make available for all of the people. An example of that is when the ruler hires a person to judge among the people on a monthly basis, or such as the hiring of employees for departments and services, and the hiring of *Muadhins* and *Imams*. Amongst the services for which the State has to hire employees in order to provide for the people are education and medicine. In regard to education this is the case, due to the consensus (*Ijma'a*) of the companions on giving provision to the teachers by a particular amount as a wage for them from the *Bait ul-Mal*. Also because the Prophet ﷺ assigned the ransom of the captives (of *Mushriks*) as being to teach ten Muslim children, while this ransom was of the booties which are property belonging to all the Muslims. In regard to medicine, this is because the Prophet ﷺ was given a doctor as a gift to him, whom he assigned to the Muslims. The fact that the Messenger ﷺ received the gift and did not dispose of it, nor take it, but rather assigned it for the Muslims, is an evidence that this gift belongs to the Muslim public, and not to him. Since the Prophet ﷺ had received a gift and He put it for all the Muslims, this indicates it is one of the things which belongs to the Muslim public. Therefore, giving provisions to the doctors and teachers is from the *Bait ul-Mal*. Nonetheless, the individual himself is allowed to

hire a doctor and hire a teacher. But the State is obliged to make medicine and education available for all citizens, with no difference between the Muslim and the *Dhimmi* or between the rich and the poor. This is because these are like the *Adhan* and the judiciary, which are of the matters whose benefit extends beyond the one himself, and the people need them; so they are of the public services which have to be made available for all citizens, and the *Bait ul-Mal* has to secure them.

Who is the Employee?

The Islamic *Shar'a* defines the employee as every person who works for a wage, whether the employer is an individual, or a group, or a State. So the term employee applies to everyone who works in any type of work, with no difference in the divine rule between the employee of the State and the employee of others. So concerning the employee of the State, the employee of the group, and the employee of the individual, each of them is a worker, and the laws of labour apply on them. In other words each of them is an employee and the rules of hiring apply on them. So the farmer is an employee, the servant is an employee, the workers in factories are employees, the clerks of merchants are employees, the civil servants are employees, and every one of them is a worker. This is because the contract of hiring is over the benefits of the assets, the benefit of the work or the benefit of the person. If this were to be applied on the benefits of the assets then the subject of the employee is not included in it, as he has no relation with it. If it were to be applied on the benefit of the work such as hiring a craftsmen for certain works, or if it applies on the benefit of the person such as hiring servants and workers, then these relate to the employee, and this is what the subject of employment applies upon.

The Basis upon which the Assessment of the Wage is Established

Hiring is a contract over a benefit in return for a recompense. The first condition for the validity of the contract of hiring is the legal competence of the two contractors, such that each of them has reached the age of maturity. Another condition for its validity is the consent of the two

contractors. Moreover the wage should be known, due to the saying of the Prophet ﷺ: **"If anyone of you hires a worker, he has to inform him of his wage"**, narrated by Ad-Daraqutni from Ibn Mas'oud. Also due to the *Hadith* narrated by Ahmed from Aby Sa'id that **the Prophet ﷺ forbade hiring a worker without explaining to him his wage.** However, if the wage was not defined, the hiring would be contracted and valid (legal). In case of dispute over the wage, reference is made to the equivalent wage. So if the wage was not defined at the time of the contract and if the employer and the employee then dispute over the wage, then the equivalent wage is adopted. The equivalent wage is adopted by analogy with the disputed marriage money (Dowry), which is decided by referring it to the equivalent dowry if it was not mentioned before, or if a dispute over the named amount occurred. This is due to what Ahmed narrated that 'Abdullah ibn Mas'oud (ra) judged in the case of a man who passed away before sleeping with a woman, whom he had married without naming the dowry. He said: "She deserves the dowry of her equivalent woman, and she has to do the Iddah (waiting period for the next marriage) and she deserves to inherit from him." Ma'qal ibn Sinan Al-Ashja'i said: "The Prophet ﷺ has judged to Barwa'a, daughter of Washiq one of our people, as you judged." The meaning of saying that she deserved the dowry of her equivalent women means a dowry identical to the dowry of equivalent women. So *Shar'a* obliged giving the equivalent dowry to the one whose dowry was not named. The same judgement is given in the case where a dispute occurs over the named dowry. Since the dowry is a recompense in the marriage contract, then recompense of any contract can be measured with it. Thus it is judged by the equivalent recompense in case the recompense was not mentioned in a contract, or in the case of dispute over the named recompense. Therefore, it is judged by the equivalent wage in the hiring, and by the equivalent price in the trading (selling) in the case where the price was not named in the contract, or there was a dispute over the named price. Therefore the equivalent wage resolves the case in a dispute between the employee and the employer over the named wage, and in the case where the wage was not mentioned. So, if the wage was mentioned in the contract then the wage would be the named one. But if it was not mentioned or if a dispute occurred over the named wage, then the equivalent wage would be judged as the wage. Thus, the wage is of two different kinds: A named wage and the equivalent wage. The condition for considering the named wage is its acceptance by the two contractors.

So if the two contractors accepted a certain wage, then this wage will be the named one, and the employer would not be obliged to pay more than it, nor would the employee be obliged to take less than it, rather it is the binding legal wage. The equivalent wage is the wage for equivalent work, or of the equivalent worker if the contract of the hiring had been concluded over the benefit of the work. The equivalent wage would be the wage of the equivalent worker only if the hiring contract was stated over the benefit of the hired person.

Those who are considered to estimate the wage are the experts in defining wages, not the State, nor the traditions of the population. Rather they are the experts on the wage for the relevant type of work, or the wage for the type of workers for whom the wage is intended to be estimated.

The basis upon which the experts estimate the wage is the benefit, whether it was for the work or the worker. Because the hiring contract is based on the benefit, it becomes the basis upon which the wage estimation is built. Thus the wage is not estimated by the production of the worker or by the lowest standard of living among his community. There is no consideration to the production of the worker nor to the high standard of living in its estimation, rather its estimation is related to the benefit. The experts estimate the wage of the worker according to the value of this benefit in the society in which they live. When the experts estimate the wage for the work and the wage of the worker, they consider the value of the benefit in the community, so they estimate it by the value of the benefit produced by the worker, or benefit of the work. If a dispute occurred over the estimation of the benefit in the community, then it should not be estimated by evidence and proof. Rather it is enough to take the opinion of the experts, because the question is to estimate the value of the benefit and not to establish an evidence about its amount.

Thus, the basis upon which the estimation of the wage is built is the benefit according to the estimation of the experts. But when the experts estimate the equivalent wage, they have to consider not only the wage of the work or the worker alone, because the wage varies with the work, worker, time and place. Rather they are obliged to look to the person who is identical to the worker doing the same work, which is to look to the work, the worker, and at the same time, they have to look at the time

and place of work, because the wage differs with the work, worker, the time and the place.

The contracting parties, that is the employer and employee, originally select the experts who estimate the wage or the equivalent wage. If they did not select the experts or differed over their selection, then the court or the State is the competent authority to appoint these experts.

Estimating the Employee's Wage

Man rushes naturally to spend effort in producing the property by which he fulfils his needs. Man's needs are numerous and he cannot meet them in isolation of other people. Therefore, it becomes inevitable that man lives in a society in which he exchanges with others the products of their efforts. Therefore, man who lives in a society spends his effort to produce both for his direct use (consumption) and for exchange. Because his needs are numerous, he does not spend all his efforts for his direct consumption only, for he is in need of properties which he does not have. It becomes necessary for him to benefit directly from the efforts of others, as in his need for education and medicine and the like.

Therefore, the types of properties which man produces, however different and numerous they are, are not enough to fulfil all his needs. This is because he cannot produce by his own effort the things that fulfil all his needs. Rather he must depend on the efforts of others. So he has to exchange his effort or his property with the fruits of the others efforts. Therefore, the exchange of people's efforts is necessary. Since these efforts may be recompensed by another effort or property it becomes necessary to have a measure that defines the values of all the fruits of efforts, relative to each other, in order that they may be exchanged. This defines the values of properties, so that they can be exchanged with each other or for labour. Therefore it is necessary that the measure used to define the value of efforts, and the measure used to define the value of properties is the same, so as to enable the exchange of properties with each other, the exchange of property with effort and the exchange of effort with effort.

Accordingly, people agreed upon a monetary reward that enables them to obtain the properties and the labour necessary for the fulfilment of

their needs. This monetary reward, concerning commodities is the price, and concerning labour is the wage. This is because, in the exchange of commodities, it is a recompense for the commodity itself, and in the exchange of labour it is a recompense for the benefit of the effort spent by man. Thus, trade transactions and hiring deals are indispensable for man, though there is no connection between trading and hiring except that they are transactions between individuals amongst human beings. So hiring does not depend on selling (trading), nor does the wage depend on the price. Therefore the estimation of the wage is different from the estimation of the price, and there is no relationship between them. This is because the price is a recompense for property, so it is inevitably a property in return for a property, whether the property was estimated with the value or the price. The wage is the recompense for an effort, which does not necessarily produce a property; rather it may or may not produce a property. The benefit from effort is not restricted to the production of property, as there are benefits other than property which result from labour. Accordingly, the efforts spent in farming, trading and industry, whatever their kind, and whatever their amount, produce property and this directly increases the wealth of the country. But the services, provided by the doctor, the engineer, the solicitor, the teacher, and other similar services, do not produce property nor directly increase the wealth of the nation. If a manufacturer took a wage he would have taken it in exchange for a property he produced, but if an engineer took a wage, he would have not taken it in exchange for a property, because he did not produce any property. Therefore the estimation of the price is inevitably in return for a property. This is contrary to the estimation of the benefit resulting from effort, which is not a return of property but rather a return of benefit, which may or may not be a property. In this way, selling is different from hiring an employee, and the price differs from the wage regarding the actual estimation

However, the difference of selling from hiring, and of price from wage, does not mean the absence of a relationship between them. Rather their difference means that hiring is not to be built upon selling or selling upon hiring. So the estimation of the price is not based upon the estimation of the wage, nor is the estimation of the wage based upon the estimation of the price. This is because establishing one of them upon the other leads to the prices of commodities which the worker produces, controlling the wages he receives, whereas the prices of the commodities

control the employer, not the employee. If the prices were left to control the employee then this would lead to the employer controlling the employee, thus he may reduce and increase the wage whenever he likes, under the pretence of the decline and increase of the prices, a matter that is not allowed. This is because the wage of the employee is in return for the benefit of his work, so his wage equals the value of his benefit, and it should not be linked to the prices of the commodities he produces. It is untrue to claim that forcing the employer to pay the estimated wage, when the price of the commodity falls, leads to his loss, and accordingly leads to making the worker redundant. This only occurs when the prices of the commodity fall down in the whole market. Therefore, this matter is left to the estimation of the experts for the benefit of the worker and not left to the employer. This is because the experts consider the whole benefit of the labour in general, and do not consider one case only. Therefore, the estimation of the wage is not based on the price of the commodity, but decided by the estimation of the experts.

Moreover, building hiring upon selling, and selling upon hiring leads to the prices of commodities needed by the worker controlling his wage, though the prices of his needed commodities should control the sustenance of the worker, and not his wage. So if the prices of the commodities needed by the labour were given control over his wage, it would make the sustenance of the worker a duty upon the employer, which he has to secure. However, the sustenance of every person is a part of his affairs which have to be cared for by the State, not by the employer. It is also not allowed absolutely to link the sustenance of the worker with his production, as the worker could be of a delicate body and not able to produce but a little, which is below his need. So if his wage is linked to that which he produces then he will be deprived of a decent livelihood, a matter which is not allowed. Thus the right of livelihood has to be secured for every person of the citizens whether he produces much or little, and whether he was able or unable to produce. Therefore, his wage is assessed by the value of his benefit, whether his wage was enough to meet his needs or not.

In this way, it is wrong to estimate the wage of the worker by the prices of the commodities that he produces, or by the prices of the commodities that he requires. So it becomes wrong to build the hiring upon selling and selling upon hiring; i.e. it is not allowed to build one of

them upon the other. Therefore, it is not allowed to build the wage upon the price, nor the price upon the wage. This is because the estimation of the wage is a matter different from the estimation of the price; and each of them has particular factors and special considerations, which have control over the estimation. The wage is estimated by the benefit that the effort produces, so the estimation is only by the benefit and not by the effort, though the benefit produced is due to the effort spent by the person. The experts estimate the wage by this benefit, according to its utilisation. The estimation of the wage is not permanent; rather it is linked to the period agreed upon, or to the job which is agreed to be performed. Once the period finished or the work is accomplished, a new estimation of the wage starts, whether by the two contracting parties or by the experts, in estimating the equivalent wage. The period could be daily, monthly or annually.

The price is the ratio of exchange between the quantity of money and the quantity of equivalent goods (commodities). So the price is the money given in return for a unit of a certain commodity at a certain time. In regard to its estimation, it is decided naturally by the market based upon the need of the people for that commodity. It is true that the price could be estimated by the extent of the need of the buyer for the commodity, so he takes it whatever it's price. It could also be estimated by the amount of the need of the seller, so he sells it whatever is its price. However this is not allowed; it is dangerous for the society and must not be permitted. This is what is called *Ghuban* (fraud). Therefore, what matters in this situation is what the sellers and buyers in the market decide and not what the (particular) contracting seller and buyer agree upon. In other words, the price is the value of the commodity estimated by the market. So the acceptance of the buyer of the price defined by the market is compulsory, and the acceptance of the seller of the price defined by the market is compulsory. The matter that defined this price and forced the seller and the buyer to accept it is the demand for the benefit of the commodity in the society in which it was sold, irrespective of its production costs. Therefore, the estimation of the price differs from the estimation of the wage, and there is no relationship between the two estimations. So, the estimation of the wage is not based on the estimation of the price. The price is only defined by the demand for the commodity, taking the shortage of the commodity in the market as a factor in this estimation. The price cannot be measured by the cost of production, as

the price may not be equal to the production costs, since it could be less or could be more according to the circumstances in the short term. But in the long term, a balance occurs naturally between the price defined by the market and the production costs. However this does not make the wage linked to the commodity's price, as the buyers and the sellers, in the short and long terms, do not look at the cost of the commodity when they trade it. Rather its price in both cases is defined by the demand for the commodity, taking into consideration the factor of its scarcity in the market.

Capitalists and Communists differed in estimating the wage of the worker to the point that they became contradictory. Capitalists give the worker the natural wage which is, in their view, that which the worker needs of the living means at their minimum standard. They increase this wage as the living costs increase over this minimum standard, and they reduce the wage if the living costs decrease. Hence the wage of the worker is estimated according to the living costs irrespective of the benefit which his effort produced for the employer and the society. Whereas, what the workers take of wages in Europe and America as Capitalists states, is an amendment of the Capitalist system by giving the worker more than his rights and more than that which the freedom of ownership gives him. Despite that amendment, that which the worker takes is still at the minimum standard of living, without which he can't live except in discontent. Raising the level of living in Europe and America allows the minimum standard of wage the worker receives, showing him to be better off, however he does not take equal to what he produces. So the estimation of the wage of the worker in Europe and America, though it does not make the worker poor compared with other countries, and enables him to fulfil his basic needs and some of his luxuries is, compared with the standard of living in the community in which he lives, relatively low. Despite raising the standard of living of workers in Europe and America, the estimation of the wage there, and in all Capitalist countries, is still at the minimum standard of living compared with their society.

However, as long as the estimation of the wage is dictated by what the worker needs of means of living at their minimum, it will result in the ownership of the workers being limited to the amount they require to meet their needs, at their minimum standard compared with the community among which they live. This is regardless of whether their

living was to meet their basic needs only, as is the case of workers in the intellectually declined countries (like the Islamic countries), or to meet their basic needs and luxuries, as is the case of workers in the intellectually progressed countries (like Europe and America). The ownership of the worker in all such countries is limited to the minimum standard of living in relation with the community among which he lives, whether the standard of living is high or low. This is the case, as long as the estimation of the wage is dictated by what the worker needs of the means of living at their minimum standard.

The Communists consider that the work, which the employee carried out, is the main factor in producing the commodity and completing its manufacture; so the work, or the ability to work, plays an essential role in producing the commodity. Thereupon, Communists consider the work of the employee is the basis of production, so the wage of the employee is equal to what he produces, and all the production costs are attributed to one element, which is the work. This is, of course, wrong and in disagreement with the reality. The tangible reality is that property in the universe, (which is created by Allah ﷻ), is the basis of the value of the commodity; the costs spent on increasing the benefit of that property or in creating a benefit in it, together with the work, are the elements which transferred it to the form by which it provides a certain benefit. Hence making the work as the basis is wrong and contradictory to the reality. Moreover, making the produced commodity equal to the wage of the employee is an invalidation of the raw material and the costs spent on its production, which could have been spent by another employee who already took a wage for it. So the current employee did not produce the commodity, and the production is not attributed solely to his work, in order to be given the commodity as his wage.

However if we assume that what is meant by the worker a worker in general, then the raw material which Allah created still remains (as part of the benefit) and it is improper to be considered as not existent and not accounted for. Moreover, considering the worker in general terms for estimation of the wage is wrong, because the workers are designated persons and the wage is but for these persons. So considering the worker in general does not lead to estimation of the wage, rather it leads to the abolition of the wage and the abolition of ownership, a matter which contradicts with man's nature. It is also an incorrect thought that has no

tangible reality.

The tangible reality indicates that man rushes to fulfil his needs by himself; thus he strives to obtain products from the universe, or from another person, or by attaching some of his effort to the things which exist in the universe, so that the property becomes suitable to fulfil his needs. Therefore, the Communist's theory of the estimation of the wage of the worker as being equal to the commodity he produced is wrong; and defining the wage as equal to what he produced excluding the raw material is wrong also. This is because the tools which the worker used and the expenses he spent have contributed to forming the commodity, yet they are not a part of the worker's work. If they were considered as a part of the workers' work looking at work in general, this leads to abolition of the wage which is wrong as was discussed previously.

The worker's wage is not linked with the commodity, whether its value or its price. Rather it is linked with the benefit which his effort provided to the individual and the community, whether this benefit exists in the raw material, like the mushroom and the apple, or it exists in the worker's contribution to the work like in the steam engine. Thus the estimation of the wage is linked with the benefit not with the commodity which he produces. Therefore, limiting the worker's wage by a certain limit, whatever its scale, is wrong and contradicts to the tangible reality. It is sufficient that the wage be known rather than defined by a certain limit. Thereupon, the theory of the wage estimation used by the Capitalists, the Communists, and the Socialists is wrong and contradicts the reality. It also causes disruption in the relationships which necessarily arise among the people during the work for fulfilling their needs.

This difference in estimating the wage of the worker is due to their differences in assigning the meaning of the value of the commodity i.e. in defining the value of the commodity. Some of the Capitalists defined the value as equal to what the commodity costs of time, effort and raw materials. As an example, the steam engine is evaluated more than the bicycle. This value is considered according to the scarcity of these commodities to them. Others said that the value of a thing depends on its benefit i.e. on its ability to fulfil the needs. Others said that the value of any commodity depends on the amount of work spent in its production, in addition to the amount of work spent in producing the

machinery and tools used in the production process. The most recent theory, (called the 'marginal utility theory'), looks at the value from the viewpoint of the producer and consumer together i.e. from the viewpoint of supply and demand, thus depending on the supply and demand. Thus the marginal benefit controls the demand i.e. it is the minimum limit of the commodity's benefit for fulfilling the need, such that the keenness for fulfilment after this marginal limit diminishes or becomes harmful. While the marginal costs of production control the supply i.e. they are the last amount of work spent in producing the commodity such that spending any more work in production becomes a loss. Thus the value fluctuates such that it maintains a balance between these two phenomena.

With regard to the value according to the Communists, Karl Marx mentioned that the only source of the value is the work spent in its production, and that the Capitalist financier buys the power of the employee for a wage which is not more than he needs to stay alive and able to work. Then he exploits this power to produce commodities whose values greatly exceed the wage which he pays to the employee. Marx called the difference between what the worker produces and what is really paid to him 'the surplus value'. He stated that this surplus value represents the amount which landlords and businessmen usurp of the worker's rights under the name of the revenue, profit and the capital interest whose legality he of course, did not acknowledge.

The fact is that the value of any commodity is the amount of its benefit, taking into consideration the factor of its scarcity (shortage). Though work is a means to obtain this benefit, or a means to produce it, it is not considered at all when this commodity is exchanged with another, nor when using it. Therefore the true view for any commodity is the view of its benefit, taking into consideration the element of its shortage, whether this commodity was possessed by man initially like from hunting, or by exchange like trading. There is no difference regarding this matter in the society of Moscow, the society of Paris and the society of Madinah. This is because man everywhere, when he strives to obtain a commodity assesses the amount of benefit that exists in it, taking in to account its shortage in the market. This is the value of the commodity as men view it, which is its true value.

But the actual value of the commodity is estimated by the amount of its exchange with another thing, whether a commodity or money. This

value, by this sense, remains constant despite the change of time, place and circumstances. With regard to the price of the commodity, it is the amount of money which is given in exchange of one unit of this commodity in a certain time, certain place and in certain circumstances. This amount changes as the time, place and circumstances change. In other words, the price is the ratio of exchange between the amount of money and the equivalent amount of commodities.

So if a person married a woman and made, as a part of her dowry, a certain described cupboard, and he mentioned its value as fifty dinars, and he eventually handed it to her, then the value of the cupboard had been designated through her receiving it as a commodity. If he later took it from her and she brought a lawsuit against him over it, then he has to hand over to her the cupboard itself not its price. If the cupboard was proved to be damaged, or he alleged that it was damaged, then he should pay her fifty dinars, because this is the value of the cupboard whether the identical cupboard at that time of the court case was more or less than fifty dinars, because this is its actual estimated value. The price of an identical cupboard is not considered. This is different than the case if it were mentioned in the marriage contract that the price of the cupboard was fifty dinars and the husband eventually handed the cupboard to his wife. Then if he took it from her and she brought a lawsuit against him over it, he would have the choice to hand the cupboard to her or to pay her its price (fifty dinars), or to buy her another cupboard with fifty dinars (whether the cupboard at the time of the court case was more or less than fifty dinars.) So he is obliged to hand to her a cupboard whose price is fifty dinars at all times.

This is because the value does not change but the price changes. So the actual value of the commodity is the amount of its exchange at the time of estimation, and the price of the commodity is the amount of money paid in the market as an exchange for it. This differentiation between the value and the price applies in trading and the different types of exchange. But the wage of an employee is the amount at which the benefit of his effort is estimated, at the time of contract. It is estimated again at the end of the hiring period. Thus it appears that there is no relationship between the wage of the worker and the value of the commodity or between the wage of the worker and the costs of production, nor between the wage of the worker and the standard of

living. It is a different matter; it is the worth of the benefit which his employer obtains. The estimation of this benefit is not left to the employer but to his need for this benefit. So the unit of estimating of the worker's wage is the described benefit. This wage differs according to the type of work, and varies with the degree of perfection in the same work. So the wage of an engineer differs from that of a carpenter, and the wage of a skilled carpenter differs from that of an ordinary carpenter. The wage of people who do the same work increases according to their perfection in their effort's benefit. This is not considered a promotion to them, but rather it is their wage which they deserve as they improved the benefit of their effort.

6
The Second Means of Ownership

Inheritance

Another means of property ownership is inheritance, which is established by the definite (*Qat'i*) text of the Qur'an, and it has certain literal rules which are not subject to reasoning. Although the Qur'an has stated the details of inheritance, these detailed rules are general guidelines. Allah ﷻ says,

يُوصِيكُمُ اللَّهُ فِي أَوْلادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ فَإِنْ كُنَّ
نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ

"Concerning (the inheritance) for your children: to the male is the equivalent of the portion of two females, and if they (children) were women more than two, then theirs is two-thirds of the inheritance." [An-Nisa: 11]

We understand many rules from His speech. We understand that the male child takes double that which the female child takes. We also understand that the child of the son is treated as the child in cases where there are no (living) children, because the children of the male child (son) are included in the word 'children.' This is contrary to the children of the daughter, who are not treated like the children of the son where there are no (living) children. Because the children of the daughter are not included linguistically in the word 'children.' We understand also that if the children were females, and more than two in number, then they share in two-thirds of the inheritance. The Prophet ﷺ made for the two females a portion equivalent to those who are more than two, and the *Sahabah* (companions) (ra) made *Ijma'a* (consensus) on that matter. So the rule in regard to the two females is the same rule for more than two females. These rules have been understood from the general meaning of the verse.

According to these rules, the inheritor deserves his portion of the inheritance. Thus, one of the means of property ownership is the inheritance according to its rules, which are detailed in the Qur'an, *Sunnah* and the *Ijma'a* of the *Sahabah* (ra).

Inheritance is one of the means by which the wealth is broken up; though the breaking up of the wealth is not an *Illah* (reason) for the inheritance, rather it is a manifestation of its reality. Once the wealth has been allowed to be possessed, it may then accumulate in the hands of a few individuals during their life. In order that such accumulation of wealth does not continue after their death, it is then necessary to have a means to divide the wealth amongst the people. It is observed in reality that the inheritance is the means of dividing this wealth naturally. Through examination, it is apparent that there are three cases of inheritance by which the wealth is broken up:

a. The first case is when the inheritors take the whole inheritance according to the laws of inheritance, whereby all the wealth is distributed amongst them.

b. The second case is when there are no inheritors who are entitled to take the whole property according to the rules of inheritance. Such a case would be if a husband died leaving behind only a wife or a wife died leaving behind only a husband. In such instances the wife takes only a quarter of the inheritance, and the husband takes only half of the property, while the rest of the inheritance in both cases is left to the *Bait ul-Mal*.

c. The third case is that when there is absolutely no inheritor at all, and in this case the whole property is put in the *Bait ul-Mal*, in other words it is left to the State.

The wealth is thus broken up and the property is transferred to the inheritors, where the exchange of the property resumes in an economic cycle amongst the people. The property is not kept in the hands of a particular person where the wealth accumulates.

Inheritance is a legal means of property ownership, so anybody who inherits a thing owns it legally. Thus the inheritance is one of the means of property ownership, which the Islamic *Shari'ah* has permitted.

7
The Third Means of Ownership

The need for Property for Sustenance

One of the means of ownership is the need of property for sustenance. This is because sustenance is a right for every human being, so he must have sustenance as a right for him, and not as a grant or as a favour. The means by which a citizen of the Islamic State secures his livelihood is work. If it is difficult for him to find work, the State has to make it available for him, because it is the caretaker of the citizens and is responsible for supplying their needs. The Prophet ﷺ said: **"The Imam is a caretaker (ra'i), and he is responsible for his subjects,"** narrated by Bukhari from Ibn Umar. If it was difficult for him to find work or he was unable to work due to sickness, old age or due to any reason of disability, then his sustenance becomes a duty upon those whom *Shari'ah* made responsible for financially supporting him. If there was no such person, or there was one but he was unable to financially support him, then the *Bait ul-Mal*, or the State becomes responsible for providing the required support. Moreover, such a person has another right from the *Bait ul-Mal*, which is the *Zakat*. Allah ﷻ said:

وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ معلومٌ للسائل وَالْمَحْرُومِ

"And in their wealth there is a right acknowledged. For the beggar and the destitute." [Al-Ma'arij: 24-25]

This right is obligatory upon the rich people who have to pay it. Allah ﷻ says in the verse of *Sadaqat*:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ..

"Alms are only for the poor and the needy.... a duty decreed by Allah" [At-Tauba: 60]

i.e. an obligatory right. If the State neglected this right, and the Muslim community neglected to take the State to task and neglected to feed (support) the needy, though it is not expected that the Muslim community would neglect this, then this person has the right to take whatever he needs to support himself, from wherever he finds it, whether it was from an individual's property or a State property. In such a case a hungry person is not allowed to eat carrion, as long as there is food with any of the people, as he is not driven by necessity to eat carrion when there is food in the hands of the people of which he can eat. However, if he could not obtain the food, then he is allowed to eat carrion to save his life. This is because the sustenance is one of the means to obtain property. *Shar'a* did not consider the taking of food in the time of famine as theft for which the hand must be amputated. It was narrated by Abu Umamah that the Prophet ﷺ said: **"There is no amputation in time of famine."** The right of the person to own property for sustenance was secured by the *Shar'a* through legislation as well as through direction. Imam Ahmad narrated that the Prophet ﷺ said: **"Any community, whosoever they are, if a person among them became hungry, they will be removed from the protection of Allah the Blessed, the Supreme."** Al-Bazzar narrated from Anas that the Messenger of Allah ﷺ said: **"The one who slept (satisfied) while his close neighbour was hungry, and he was aware of that, would not have believed in me truly."**

8
The Fourth Means of Ownership

That which the State gives of its Properties to the Citizens

Another means of property ownership is that property which the State gives from the *Bait ul-Mal* properties to the citizens in order to meet their needs or to benefit the community by their ownership. With regard to the meeting of their needs, the State grants them properties with which they cultivate lands or repay their debts. 'Umar bin Al-Khattab gave properties from the *Bait ul-Mal* to the farmers in Iraq, by which he helped them to plant on this land and to meet their needs without being reimbursed from them. *Shar'a* made for the debtors a right in the *Zakat* property, from which they are given to repay their debts if they were unable to do so.

Allah ﷻ said:

"and the debtors." [At-Tauba: 60]

With regards to benefiting the community from the individual property, this occurs when the State grants to its citizens from its unused properties, such as the State giving land, which has no owner. As the Prophet ﷺ did when he gave Abu Bakr and 'Umar some land when he ﷺ emigrated to Madinah. He ﷺ also gave Az-Zubair a wide area of dead land of al-Naqee'a, as much as his horse could run in, and he ﷺ also gave him land which had trees and palms. Similarly the rightly guided Khulafaa after him gave lands to the Muslims. This land which the State gives to the person becomes his property through this granting. For the community is in need of the benefit of this property, of facilitating the individual to utilise this property, and of employing his mental and physical efforts for the benefit of the community by means of its

ownership. This term of granting (*Iqta'a*) used here is lingistic and jurist one, and it has no relation with the known feudal (*Iqta'a*) system which Islam never acknowledged.

What the State distributes amongst the warriors from the booties, and what the Imam allows them to hold of the war spoils are also examples of what the State grants to the individuals for them to own.

9 The Fifth Means of Ownership

The Property obtained by Individuals without exchanging Labour or Money

Another means of ownership is that which the individuals take from the properties of others without giving an alternate property or an effort. This means includes five types.

1. Rewards which the individuals give to each other. This could be in their lifetime such as a grant and a gift, or after their death such as the property of a will. An-Nisai and Ibn Ishaq narrated in the Seerah of the Messenger of Allah ﷺ from 'Amr ibn Shu'aib from his father, from his grandfather that when the delegates of Hawazin came to the Prophet ﷺ and asked him to return to them the properties which he had gained from them as spoils, the Prophet ﷺ said: **"The spoils which belong to me and to the sons of 'Abdul-Muttalib are for you,"** in other words they are a grant from me to you. Ibn' Asakir narrated from Abu Hurairah that the Prophet ﷺ also said: **"Exchange gifts amongst yourselves so that you love each other."** It was narrated by Bukhari from Ibn 'Abbas that the Prophet ﷺ said: **"We do not set the bad example; the one who claims back his grant is like the dog which returns back its vomit."**

There is no difference between a disbeliever and a Muslim concerning the grant and the gift. Granting a gift to the disbeliever is permitted and accepting that which he gives is like accepting that which a Muslim gives. It is narrated from Asma, daughter of Abu Bakr, who said: **"My mother visited me while she was still a polytheist (Mushrik), included in the covenant which the Messenger of Allah ﷺ had with Quraish (Treaty of Hudaibiyyah), so I consulted the Prophet, 'O Prophet of Allah! My mother has love for me, should I give her a present?' He ﷺ said: 'Yes.'"** Bukhari narrated from Abu Hameed As-Sa'idi, who said that **the King of Ayla gave the Prophet ﷺ a white mule and a dress**

as a gift.

As the grant (*Hiba*) and the gift (*Hadiyyah*) are the voluntary giving of property during the lifetime, the property of the will (*Wasiyah*) is the voluntary giving of property after the death. Allah ﷻ says,

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ

"It is prescribed for you, when one of you approaches death, if you leave wealth, that it be bequeathed unto his parents and relatives." [Al-Baqarah: 180]

It was narrated by Bukhari that Sa'ad ibn Waqqas said: **"I was ill once in Makkah to the point I was approaching death. The Prophet ﷺ came to visit me. So I said: 'O Messenger of Allah, I have great wealth, and nobody inherits from me except my daughter. Can I bequeath two thirds of my property?' He ﷺ said: 'No.' I said: 'Half of it?' He ﷺ said: 'No.' I said: 'One third of it?' He ﷺ said: 'The third is big (enough). It is better to leave your children rich than to leave them poor and begging from the people.'"**

Thus the person, by the means of the gift, the grant or the bequeathed property, is given ownership of the thing gifted, granted or bequeathed to him.

2. Property due to a person as a recompense for a harm which had befallen him, such as the blood money and the wound money. Allah ﷻ said:

وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ

"He who has killed a believer by mistake must set free a believing slave and pay the blood money to the family of the slain." [An-Nisa: 92]

An-Nisai narrated that the Prophet ﷺ wrote a letter to the people of Yemen and he sent it with Amr ibn Hazm; it included **"The blood money for the (killed) person is 100 camels."** With regards to the wounds money, An-Nisai narrated from al-Zuhri from Abu Bakr ibn

Mohammed ibn 'Amr ibn Hazm from his father from his grandfather that the Prophet ﷺ wrote to him a letter saying: **"The blood money is paid in case of the amputated nose, the tongue, the two lips, the two testicles, the penis, the spine and the two eyes. Half the blood money is paid for one leg. For the wound, which reaches inside the head (even scraping the scalp) one third of the blood money, and for the wound which reaches inside the stomach, or inside any member of the body one third of the blood money. In the wound which breaks the bones 15 camels."**

The blood money for the one slain intentionally is due to his inheritors from the killer. It is narrated by ibn Majah from 'Amr ibn Al-Ahwas that the Prophet ﷺ said: **"The one who incurs a crime does that on himself only."** In case of the non-intentional killing, like the killing which appears like it is intentional or that committed by mistake, the inheritors of the slain are entitled to claim the blood money from the close relatives of the killer. Bukhari narrated from Abu Hurairah, who said: "Two women from Hudhail quarrelled; one of them threw a stone at the other and killed her and the embryo in her womb. They complained to the Prophet ﷺ. He ruled that the blood money for the women's embryo was a slave (male or female), and he ruled that the blood money of the woman was for her close relatives (*'Aqilah*)." *'Aqilah* means the one who bears the *'Aqal*. '*Aqal* here means the blood money. *'Aqilah* includes all the close relatives of the killer, fathers, sons, brothers, uncles (fathers' brothers) and their sons. If the killer has no *'Aqilah*, the blood money is taken from the *Bait ul-Mal* because the Messenger of Allah ﷺ paid the blood money of the Ansari who was killed in Khaybar from the *Bait ul-Mal*. It was also narrated that a man was killed in a crowd at the time of 'Umar and his killer was not known so 'Ali said to 'Umar, "O Leader of Believers, no blood of a Muslim is wasted, so pay his blood money from the *Bait ul-Mal*."

Regarding wounds such as the breaks (fractures) of the head or the face, or the cutting (amputating) of a member of the body or a piece of flesh or, the disablement of a faculty such as the disabling of hearing, sight and mind where one of these wounds occurs to a person, then he deserves money on these wounds according to the detailed rules of each member in each case. By means of the blood money due to a person from the blood money of the slain or for the damaged member or for the

faculty disabled, this person owns that money or property.

3. The marriage money and other additional things (such as a house, gifts) of the marriage contract due to the woman are owned according to the detailed rules of marriage. This property is not an exchange of a benefit because the couples mutually exchange benefit (satisfaction). It is rather due through the Statement of *Shar'ah*. Allah ﷻ said:

وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً

"And give unto women (whom you marry) free gift of their marriage portions" [An-Nisa: 4]

i.e. willingly, and by taking the due money which Allah ﷻ prescribed. This money is a gift, because each of the couple enjoys his partner. Ahmad narrated about Anas who said: **"Abdurrahman ibn 'Awf was wearing a dress of saffron so he ﷺ said: 'Are you passionately in love?' He said: 'O Messenger of Allah, I have married a woman.' The Prophet ﷺ said: 'What gift did you give to her?' He said: 'A date seed weight of gold.' The Prophet ﷺ said: 'May Allah bless you. Make a feast even with one sheep.'"**

4. The picked up property (*Luqatah*). If a person found a lost thing, the matter has to be examined. If the thing could be saved and be described to people such as gold, silver, jewellery or dresses, and it was away from the area of the *Haram* (the Ka'bah) then it is allowed to be picked up for possession. This is because of what Abu Dawud narrated from 'Abdullah ibn 'Amr ibn al-'As that the Messenger of Allah ﷺ was asked about lost things picked up from the road and He said: **"Whatever of it was found in a used road or a village, you have to announce its description for one year. If its owner came, it is his, otherwise it is yours, and there is duty on it as on hidden treasure (one-fifth to the State)."** If the found thing was found in the *Haram* it is not considered *Luqatah* because the *Luqatah* of the *Haram* is prohibited according to what came in the *Hadith* narrated from 'Abdurrahman ibn 'Uthman that the Messenger of Allah ﷺ forbade the *Hajj* (pilgrim) from picking such things. In that case it is not permitted to pick it except to protect it for its owner because the Messenger of Allah ﷺ said: **"No one is allowed to pick a fallen thing except the one who is looking for it,"** as narrated by Bukhari.

If the found thing was not of the kind that can be saved as it will not remain suitable, like for example, food such as a melon and the like, then the person has a choice between eating it and paying its price to its owner if found, or selling it and keeping its price for one year. All this is in the case of *Luqatah* (a picked thing) which would usually be claimed as it has a value and its owner would not have ignored it if it was lost. If it was of the trivial things such as a piece of fruit or a piece of food (mouthfuls worth) and the like, he does not need to announce its description and he may own it at once.

5. Recompense given to the *Khalifah* and those whose work is considered to be ruling. This is not given to them in exchange for their work, but rather as a recompense for being prevented from practising their own business. These rulers own the property from the moment they take it because Allah ﷻ made it *Halal* for them. Abu Bakr took a property as a recompense for being prevented from trading when he was asked to exert all of his effort in taking care of the Muslims affairs, and the *Sahabah* made *Ijma'a* on that.

All these five types or properties, the gift, recompense for damage, marriage money, *Luqatah* and recompense to the rulers, in all cases are not possessed in exchange for another property or for an effort. Possessing the property in these cases is one of the legal means of ownership by which the person owns the taken property.

10

The Way to Dispose of Property

Right of Disposal

Ownership has been defined as a divine rule concerning an object itself or a benefit, a matter which requires that its owner is entitled to use the thing and receive a recompense for it. Thus, the ownership is the divine rule estimated in terms of object or benefit; in other words it is the permission of the Lawgiver. The disposal (of the owned objects) is a matter, which therefore results from this divine rule, namely from the permission of the Lawgiver that entitled the owner to use the object and be compensated for it. The disposal of the owned thing is thus restricted by the permission of the Lawgiver because the ownership itself is the permission of the Lawgiver to use the object, and disposal is equivalent to using the object. Since property belongs to Allah ﷻ, and He ﷻ appointed man to use this property with permission from Him ﷻ, then the individual's ownership of a property is similar to a job he performs to use the property and to invest it, rather than owning it. This is because when the person owns a property he does so to benefit from it, and he is restricted in that by the limits of the *Shar'a* and not left free in his methods of utilisation. He is also not free in his disposal of the object itself even if he owned it. The evidence for this is that if he disposed of it by using it illegally such as using it foolishly or wastefully, the State has to deny him access to the property and prevent him from disposing of it, thus denying him the responsibility for disposal which had been granted to him. Therefore, the disposal of the object and its usage is a matter which is implied by its ownership, or it is the effect of this ownership. The disposal of the owned thing includes the right of increasing (investing) the property and the right to spend it for living expenses and for giving gifts.

Increasing Property (Investment of Property)

The increase of property is related to the styles and means used to produce it. However, increasing ownership of this property is related to the manner by which the person increases this ownership. The economic system has nothing to do with the increase of property; rather the system is involved with the increase of ownership. Islam did not interfere with the increase of property, and it left man to increase property by the styles and means, which he considers suitable for doing so. Islam does however interfere with the increase of ownership of property and has explained its rules. The increase of ownership is restricted by the limits given by the Lawgiver, which may not be transgressed. The Lawgiver has placed general guidelines to determine the manner by which ownership may be increased, and He ﷻ left the scholars (*Mujtahideen*) to deduce the details of these guidelines from them based on their understanding of the incidents. However, the Lawgiver did prevent certain manners. Thus He explained the transactions and contracts with which ownership may be increased and those with which the person is prevented from increasing the ownership.

Upon examination, one finds the properties in this worldly life to be limited to three things which are: land, property which results from the exchange of things, and property which results from transforming things from one form to another. Things which man deals with to obtain property or to increase it are agriculture, trading, and industry. In this way, the manners by which the person increases his ownership of property must be a subject of discussion in the economic system. Agriculture (farming), trading and industry are styles and means used to produce property and the rules related to them show the manner by which the person increases his ownership of property.

Shar'a explained the rules of farming by manifesting the rules of land and that which is related to it. It also explained the rules of trading by manifesting the rules of selling and companies and related matters. It also explained the rules of industry by manifesting the rules of the labourer and manufacturing. With regard to the products of industry, they are included in trading. Increase of ownership is thus restricted by the rules of the *Shar'a*, which are the rules of lands and related matters, selling and companies and matters related to them and also the rules of

the labourer and manufacturing.

The Rules of Lands

Land has a neck (the land itself) and a benefit. Its neck is its origin, and its benefit is its use in farming and other uses. Islam allows the ownership of the neck of the land as it allows the ownership of its benefit, and has put rules for each of them. With regard to the ownership of the neck of the land this has to be examined. If the country which includes this land has been opened by conquest, then the neck of the land will be owned by the State, and the land would be *Kharaji* land, except if it was in the Arab Peninsula.

If the country was opened peacefully, then this is also to be examined. If the peace treaty stated that the land belongs to the Muslims, and the State settled the people in their land in return for a *Kharaj* they pay to the State, then this *Kharaj* remains permanent. The land of such a country remains *Kharaji* land until the day of Judgement even if its owners embraced Islam or its ownership was transferred to Muslims through sale or in any other way.

However, if the peace treaty stated that the land belongs to them and it remained in their hold and they settled upon it, in return for a certain *Kharaj* imposed upon them, then this *Kharaj* is considered like *Jizya*. Such *Kharaj* is abolished once they embrace Islam or if they sold the land to a Muslim. In contrast, if they sold the land to a disbeliever the *Kharaj* remains without being abolished, because the disbeliever is subject to *Kharaj* and *Jizya*.

If the people of the country have embraced Islam in their land, like Indonesia, or the land which is part of the Arab Peninsula, then the neck of the land is owned by its inhabitants, and the land is considered *'Ushri* land.

The reason for this treatment is that land is a form of property taken as booty in war. It is *Halal* (allowed) and it is the property of the *Bait ul-Mal*. Hafs ibn Ghiath narrated from Abu Dh'ib from Zuhri who said: **"The Messenger of Allah ﷺ accepted the *Jizya* from the fire-worshippers (*Majus*) of Bahrain. It was accepted from any one of its**

people who embraced Islam, and his life and his property would be protected, except his land which is considered as booty for the Muslims, because he did not accept Islam initially when he was under no threat." The difference between the land and the other booties is that other booties can be disposed of by dividing them amongst the Muslims, but the neck of the land is kept under the disposal of the *Bait ul-Mal* from the legal point of view although, practically, it remains in the hands of its inhabitants who can benefit from it. Keeping the neck of the land with the *Bait ul-Mal* and enabling the people to benefit from it means that it is a public booty for all Muslims, whether they exist at the time of conquest or they come later on.

As for the Arab Peninsula, all of its land is '*ushri* land, because the Messenger of Allah ﷺ opened Makkah by force and he left it to its people and did not put *Kharaj* on it. Moreover, since the *Kharaj* on the land is similar to the *Jizya* on the person, it does not apply to the land of the Arab Peninsula as the *Jizya* does not apply on the necks of its inhabitants. This is the case because the condition for imposing the *Kharaj* on the land is that its inhabitants are left to what they believe in and what they worship, as was the case of the land of Iraq. While the polytheists of the Arab peninsula had no choice except to embrace Islam or to fight. Allah ﷻ said:

فَإِذَا انسَلَخَ الأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ
وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا
وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ

"Then, when the sacred months have passed, slay the polytheists wherever you find them, take them (captive), besiege them and prepare for them each ambush. But if they repented and established the prayer and paid the zakat then leave their way free." [At-Tauba: 5]

Allah ﷻ also said:

سَتُدْعَوْنَ إِلَى قَوْمٍ أُوْلِي بَأْسٍ شَدِيدٍ تُقَاتِلُونَهُمْ أَوْ يُسْلِمُونَ

"You will be called against a folk of mighty powers, to fight them or they surrender (declare Islam)." [Al-Fath: 16]

As long as no *Jizya* was taken from the Arab idolaters, then no *Kharaj* is to be taken from their land.

In all the countries opened to Islam by conquest or opened by peace treaty on condition that the land belongs to the Muslims, the neck of the land is a property of the State. It is then, considered *Kharaji* land whether it is still under the authority of the Islamic *Ummah* like Egypt, Iraq, India and Turkey, or it came under the authority of the disbelievers like Spain, Ukraine, Albania, Yugoslavia and others. Every country whose inhabitants declared Islam by themselves without conquest, like Indonesia and all the Arab peninsula, their land is owned by the inhabitants and considered *'Ushri* land.

With regard to the benefit of the land, it is considered a personal property, whether it was *Kharaji* land, '*Ushri* land, whether it was given to the people by the State, they exchanged it between themselves, they reclaimed it or they secluded it. This benefit gives the person who disposes of the land rights similar to those given to the owners of the neck of the land. So this person has the right to sell it, grant it or leave it behind so as to be inherited from him. This is the case because the State has the right to grant lands to individuals, whether the land is 'ushri or *Kharaji*. Granting the *Kharaji* land is appropriating the benefit of the land, while keeping its neck to the *Bait ul-Mal*. In the case of the 'ushri land granting is appropriating the neck of the land and its benefit.

The difference between *'Ushr* and *Kharaj* is that *'Ushr* is taken from the harvest of the land. This means that the State takes from the land's farmers one tenth of the real production of the land if it is irrigated naturally by rain water, and it takes half of the tenth of the real production if the land was irrigated artificially by a waterwheel or other similar means. Muslim has narrated from Jabir that the Messenger of Allah ﷺ said: **"One tenth is put on what is irrigated by the rivers and rain and half of the tenth is put on what is irrigated by the waterwheel."** This tenth is considered a *Zakat* and is put in the *Bait ul-Mal*, and it is not paid except to one of the eight categories mentioned in the Qur'anic verse:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ

"The alms are only for the poor, and the needy, and those who collect them, and those whose hearts are to be reconciled and to free the slaves, and the debtors, and for the way of Allah (Jihad) and for the wayfarers; a duty imposed by Allah." [At-Tauba: 60]

Al-Hakim, Al-Baihaqi and At-Tabarani reported through the *Hadith* of Abu Musa al-Ash'ari and Mu'adh that when the Messenger of Allah ﷺ sent them to Yemen to teach people the deen, he ﷺ said: **"Don't take zakat or charity except from these four things: Barley, wheat, raisins and dates."**

However *Kharaj* is that which the State takes from the landlord; a certain quantity which it estimates and defines according to the usual estimated production of the land, rather than its actual production. *Kharaj* is estimated on the land by as much as can be afforded from it, without bringing injustice, neither to the landlord nor to the *Bait ul-Mal*. It is collected every year from the landlord whether it was planted upon or not and whether it was fertile or barren. Abu Yusuf narrated in Al-*Kharaj* from Amru bin Maymun and Haritha bin Mudhrab: "Umar bin Al-Khattab sent 'Uthman ibn Hanif to the land of Iraq and he ordered him to survey it. On each *Jareeb* (a patch of arable land) whether it was cultivated or overflowed with water, but could be usually used, he put one *Dirham* and one *Qafeez*" (about 16kg). Abu Yusuf also reported in the same book *Al-Kharaj* narrating from Al-Hajjaj bin Arta'a who narrated from Ibn 'Awf who said that "Umar bin Al-Khattab surveyed the land beyond the mountain of Halwan (in Iraq), and on every *Jareeb*, whether it was cultivated or overflowed with water irrigated by a bucket or something else, and whether it was planted or neglected, he levied a *Dirham* and one *Qafeez*." *Kharaj* is placed in the *Bait ul-Mal* in a section other than that of zakat. It is spent on all the aspects which the State decides, in the same way as the other properties of *Bait ul-Mal*.

Concerning the land which was opened by force and upon which *Kharaj* was imposed, its *Kharaj* continues forever. If its inhabitants embraced Islam or they sold it to a Muslim, its *Kharaj* is not abolished, because its

character as being opened by force remains for all time. Accordingly, the new (Muslim) landlords have to pay the *'Ushr* and the *Kharaj*. This is the case because the *Kharaj* is a right due on the land, while the *'Ushr* is a right due on the production of land owned by a Muslim, a matter established by the verses and the *Ahadith*. There is no contradiction between the two rights, as each one of them is established by its own evidence. With regard to what the *Ahnaf* chose in not combining the *'Ushr* and the *Kharaj* on the same land, referring to a *Hadith* from the Messenger of Allah ﷺ: "Ushr and Kharaj do not add together upon a land owned by a Muslim"; this saying is not a *Hadith*, and the collectors of *Ahadith* (*Huffadh*) did not prove that the Prophet ﷺ said it.

As for the collection of the *Kharaj* and *'Ushr*, it is started with collecting of the *Kharaj*. If that which is left after paying the *Kharaj*, of plants and fruits amounts to the *Nisab*, then the *Zakat* is taken from it. However, if that which is left after paying the *Kharaj* is less than the *Nisab*, then there is no *Zakat* upon it (i.e. no *'Ushr*).

Cultivation of Barren Land

The dead land is that land upon which there are no signs of ownership such as fencing, planting, habitation or the like. Cultivation of land means making it suitable for farming at once. Every piece of dead land once cultivated by a person becomes his ownership. Thus the *Shari'ah* gives it to the one who cultivates it. This is according to what Bukhari related from 'Aisha (ra) that the Messenger of Allah ﷺ said: **"Whosoever cultivated a land that is not owned by anybody, then he deserved it more."** Abu Dawud narrated that the Messenger of Allah ﷺ said: **"Whosoever fenced a (dead) land it becomes his"** and Bukhari narrated from Umar (ra) that he ﷺ said: **"Anyone who cultivated a dead land it becomes his."** Muslims and the *Dhimmi* are equal in this matter, because the *Hadith* is general in its words.

Cultivation is a different matter to the State granting of land. The difference between them is that the cultivation is related to the dead land upon which there is no apparent ownership. There are no signs of fencing, planting, building or the like. Cultivation of such land means to populate it with anything that indicates inhabitation. The granting of

land however, is giving of the land that is inhabited and is suitable for farming immediately. This is the land that shows signs of previous ownership. Fencing the land is similar to its cultivation. This is due to the saying of the Messenger of Allah ﷺ, **"Whosoever fenced a land with a wall then it becomes his"** and his ﷺ saying, **"Whosoever fenced anything with a wall, it becomes his thereby."** Also his ﷺ saying, **"Whosoever reached a thing first that no other Muslim reached before, he deserves it more."**

Thus by fencing, the fencer gains the right of disposal of the land as the *Hadith* stated. The fencer also has the right to prevent anyone who wanted to from cultivating that which he has fenced. If another person overpowered him and managed to inhabit the land that he had fenced, he would not own that land and it would be returned back to the original fencer. Fencing is also like cultivation with regard to the disposal of the land and possession of it. If the person who fenced a land later sold it he owns its price, because the land is a right that can be recompensed with property, so it can be exchanged. If this person died, the ownership of this fenced land is transferred to his inheritors like any other of his properties and they gain the right of disposal over it and it is divided amongst them according to the divine rules like other inherited properties. However, fencing a land does not mean just putting stones around it, it is rather putting anything around it which indicates holding a hand over it, which indicates ownership. Fencing could be by placing stones around the land, putting dry branches, clearing it, burning the thistles, cutting the spikes and grass, or placing other such items around it to prevent people entering it. It could also be by preparing the canals even if one did not irrigate it, or any other similar thing.

From the *Hadith*, it is clear that fencing like cultivation must only be with regard to the dead land, and it would not be for other than that. The saying of Umar (ra) "a fencer has no right after three years" referring to the fencer has no right in the dead land. The non-dead land cannot be possessed by fencing nor by revival, it is rather possessed by granting from the Imam. This is because revival and fencing came connected with the dead land. The Messenger of Allah ﷺ said: **"Whoever revived a dead land..."** The word 'dead' is an adjective, so it has a concept that is usable as a restriction on the word land. (This means that the land that is other than dead land cannot be owned by walling or revival). Al-Baihaqi

also narrated from Amir ibn Shuaib "that Umar made fencing for three years." If he left it (the land) for three years and another person cultivated it then he becomes more deserving of it. This means that the non-dead land is not owned by fencing or cultivation.

This differentiation between the dead and used land indicates that the Messenger of Allah ﷺ allowed the people to own the dead land by habitation and fencing. So it became of the *Mubah* things. Therefore, it does not need permission from the Imam for habitation or fencing, because the *Mubah* things do not need permission from the Imam.

However, the lands which are not dead are not owned unless the Imam granted them because they are not of the mubah things. They are rather the lands on which the Imam put his hand and which are called the lands of the State. The matter which proves this case is that Bilal al-Muzni asked the Messenger of Allah ﷺ to grant him a land, and he did not own it except after the Messenger of Allah ﷺ granted it to him. If the dead land could be owned by habitation or fencing Bilal would have encircled it by any marks which denote his ownership, and he would have owned it without asking the Messenger of Allah ﷺ to grant it to him.

Whoever cultivates a dead land of the *'Ushri* land, he owned its neck and its benefit, whether he is Muslim or non-Muslim. For such land, the Muslim landlord is obliged to pay the *Zakat* (*'Ushr*) of the plants and fruits which are entitled for *Zakat* once the amount of the harvest reaches the *Nisab*. As for the non-Muslim landlord of such land, he is not obliged to pay either *Zakat* or *Kharaj*, because he is not one of those who are subject to pay *Zakat* and because there is no *Kharaj* on *'Ushri* land.

Whoever cultivates a dead land in *Kharaji* area where no *Kharaj* has been put over it before, he owns its neck and its benefit if he is Muslim. If he is non-Muslim he owns its benefit only. The Muslim landlord of such land is obliged to pay the *'Ushr* with no *Kharaj* on him. While the non-Muslim landlord has to pay the *Kharaj*, similar to that put on its kuffar inhabitants at the time of its conquest.

Whoever cultivates a dead land in *Kharaji* area where *Kharaj* has been levied before it became dead, he owns its benefit only without owning its neck, whether the landlord is Muslim or non-Muslim. Such a landlord is

obliged to pay the *Kharaj* because it is a conquered land. Therefore, the *Kharaj* remains on it at all times, whether owned by a Muslim or non-Muslim.

This is the case if the land was cultivated for farming. If, however, the land is cultivated or fenced for the purpose of housing, industry, stores or sheds, then no *'Ushr* or *Kharaj* is due, whether it was originally *'Ushri* or *Kharaji* land. This is the situation because when the Sahabah opened (i.e conquered) Iraq and Egypt they built Kufa, Basra and Al-Fustat and they lived there at the time of Umar ibn Al-Khattab. Other people (Muslims and non-Muslim) joined them in these cities. Yet *Kharaj* was not levied on them, nor did they pay *Zakat*, because *Zakat* is not due on homes and buildings.

Disposal of Land

Every landlord is obliged to use his land. The owner, who is in need of help for using the land, is helped by the *Bait ul-Mal*. If he neglects the use of the land for three continuous years it is taken from him and given to another person. 'Umar ibn Al-Khattab said: "The one who fences (something) has no right in it after three years." Yahya ibn Adam reported from Amru ibn Shu'aib, who said: **"The Prophet ﷺ granted land to some people from Mazina or Johaina and they neglected it. Other people came and cultivated it. 'Umar said: 'If the land was granted by me or by Abu Bakr, I would have returned it back (to those people). But since it was granted by the Messenger of Allah ﷺ I would not.' And he said: 'Whoever neglected a land for three years without using it and another person came and used it, it becomes his.'"** What is meant by the words of 'Umar is that the land was not used for more than three years. If it was a grant from Abu Bakr, then less than three years had passed and if it was from 'Umar, less than three years had passed as well. As a grant from the Messenger of Allah ﷺ, however more than three years had passed, so it could not be returned back to those who were given the grant.

Abu Ubayd reported in the book of Al-Amwal from Bilal ibn al-Harith al-Muzni that the Prophet ﷺ had granted him all of al-Aqeeq. He said that during the time of 'Umar, he ('Umar) said to Bilal, "The Messenger

of Allah ﷺ did not grant you the place to fence it against the people but to use it. So take of it as much as you can afford and return the rest of it." Therefore it is *Ijma'a* of the Sahabah that whoever neglected his land for three years, would have the land taken away from him and given to another person.

In this way the landlord is allowed to plant upon his land by use of his tools, seeds, animals and labour; and he has the right to employ labourers to work on it. If he cannot use it then the State may help him. If the landlord does not do this he has to give it to another person, to plant upon it, as a grant without recompense. If he does not do this and he keeps hold of it he is given a period of three years. If he neglects it for three years, the State will take it from him and grant it to someone else. It is narrated by Yahya ibn Adam in the book of Al-*Kharaj* that Yunus narrated from Muhammad ibn Ishaq from 'Abdullah ibn Abu Bakr, who said: "Bilal ibn al-Harith ibn al-Muzni came to the Messenger of Allah ﷺ and asked that he grant him a certain land; the Prophet ﷺ granted him a large piece of land. When 'Umar took the authority he said to Bilal, 'O Bilal you asked the Messenger of Allah ﷺ to grant you large land so he granted it to you; and the Messenger of Allah ﷺ was not used to holding back anything he was asked to give and you can't manage this land.' Bilal said: 'Yes.' 'Umar said: 'So look at the part which you can manage and hold it, and the part which you are not able to use give it to us so as to divide it amongst Muslims.' Bilal said: 'I swear by Allah I will not do that to a land the Messenger of Allah ﷺ gave to me.' 'Umar said: 'By Allah you must do it.' So 'Umar took from him the part he could not use and divided it amongst the Muslims." It is quite clear that the person who owns land but cannot plant upon it and who neglects it for three years, will have it taken from him by the State and given to another person, as 'Umar ibn Al-Khattab had done with Bilal al-Muzni with regard to the land of the mines of al-Qabliyah.

In conclusion, land is owned by fencing, by granting from the *Khalifah*, by cultivation, by inheritance and by trading. The texts, which came concerning taking the land from the one who neglected it for three years, have mentioned the one who fenced the land, and the one who was granted the land by the *Khalifah*. They did not mention other types of landlords, such as the inheritor, the one who cultivates the land and the buyer. So, does ignoring any land for three years owned by a person allow

the *Khalifah* to take it from him and give it to another? Alternatively, is this specific to the one who fenced a dead land, and the one who was granted the land by the *Khalifah*? To answer this question we notice that fencing of the land is like buying it or inheriting it or any other means of ownership from the angle of disposal of the land, and possession of it. If the one who fenced the land sold it he would own its price because it is a right in exchange of property, so it is allowed to be recompensed for it. In addition, if the one who fenced the land died, the ownership of the land is transferred to his inheritors like the rest of the properties which they dispose of, and they are divided amongst them according to the *Shari'ah* rules. This is also similar to the one to whom the *Khalifah* grants a piece of land. Therefore, the one who fences a land and the one who is granted a land, do not have any specific merit that distinguishes them from the other landlords, which would make taking the land from them, if it was neglected for three years, specific to them to the exclusion of the rest of the landlords, who own the land through other means of ownership. Nor do they have that merit that makes the fencing and the granting of land as a constraint for taking the land if it was neglected for three years. With regards to the argument that the texts specifically mentioned them alone, this does not indicate constraint, because this is not a description, which means that taking the land from the one who neglects it, is only because he owned it by fencing or granting. It is rather a text that stated one single member of the *Mutlaq* (unrestricted), where land is taken from one type of owner if he neglects it. The text is general and mentioning ownership by fencing and granting is just a mention of one member of the *Mutlaq* (unrestricted) not a restriction that excludes other than them. However, if the text came regarding an incident, it has to be examined. If it included reasoning, then it becomes a general text in the reasoned matter. The text in question indicates reasoning, which is taking the land after three years because of neglecting its farming. The neglect of the land for three years is the reason (*Illah*) for taking it. The reason for taking the land from the one who fenced it is thus because he neglected it for three years, not because he is an owner by fencing, or because he is an owner by fencing who neglected the land. Fencing of the land does not indicate it is the reason for taking it, neither by itself (fencing) nor by combining it with neglecting. Rather neglecting alone is the matter which indicates the reason (*Illah*) for taking it. Thus neglecting the land is a reason (*Illah*) which revolves with the reasoned rule, in existence and absence. Wherever neglecting of the land by its owner for

three years occurred, it would be taken from him whether he owned it by fencing or by granting or by inheritance or by any other means. If the owner by fencing did not neglect his land for three years it would not be taken from him.

In addition, fencing of the land as mentioned by 'Umar (ra.) in the *Hadith* of the Messenger of Allah ﷺ: **"Anyone who fences a land** *(Muhtajir)* **has no...."** is an indirect expression of its ownership; as it is usual that the owner of the land fences the land by encircling its borders with stones, so as to be known as his property, and be differentiated from the property of others. It is not a condition that he puts stones around it so as to be called a fencer. Rather, to put plants or trees on the borders of the land or to dig a ditch, or carry out any work which indicates that he possesses it, all this is called (*Ihtijar*), and the one who does that to a land is called a fencer (*Muhtajir*). The Messenger of Allah ﷺ says in another *Hadith* that is narrated by Abu Dawud: **"Whoever encircled a land by a fence..."** The *Hadith* implies that walling (fencing) of the land is an indirect expression of its ownership, according to the linguistic meaning of the word "fenced." Linguistically, the word *Ihtajara* refers to something one puts in his lap or embraces. *Ihtijara* (walled) with respect to a land, means one embraced it, meaning ownership of it. Therefore the meaning of the *Hadith* will be that whoever embraced a land (owned it), has no right after three years, whether he put stones on its borders, or he encircled it by a fence, or he did anything that indicates his ownership of it.

This is the argument with regard to the text. However, with regard to what 'Umar followed, and the rest of the companions kept silent on, 'Umar ordered that the land which the Messenger of Allah ﷺ granted to Mazina which others cultivated, be given to those who cultivated it, and he prevented Mazina from taking it. He also said: "Whoever neglected a land for three years without cultivating it, and some other person cultivated it, it would be his." This speech of 'Umar is general, as he said: "Whoever neglected a land…" He also said to Bilal ibn al-Harith al-Muzni "The Messenger of Allah ﷺ did not grant you land to fence it against the people, rather he granted it you to use it, so take the part which you can manage, and return the rest of it." He actually took from him that which he was unable to use. Limiting this decision to granted land alone without a clear evidence of specification is not allowed, rather

it should stay general. The fact that the incident occurred with the person who was granted the land is just an expression about an incident, and is not limited to that incident.

Therefore, every landlord who neglects the land for three years has his land taken from him and given to another, whatever his means of ownership of the land was. What matters is the neglecting of the land and not the means of its ownership. It is not true to say that this means taking the property of people without right. This is because *Shar'a* gave land ownership a meaning different to that of the ownership of moveable properties or the ownership of buildings: it made land ownership for cultivating it. If it was neglected for the period determined by the *Shar'a*, then the landlord would have ignored the meaning of its ownership. *Shar'a* has made the ownership of the land for farming whether by cultivation, granting, inheritance, buying or other means. It also made the stripping of the ownership of it, by negligence. This is all for the purpose of continual farming and use of the land.

Preventing the Leasing of Land

A landlord is absolutely not allowed to lease his land for farming, whether he possessed both its neck and benefit, or he possessed its benefit only, whether the land was *'Ushri* land or *Kharaji* land and whether its rent was money or something else. He is also not allowed to lease the land for a part of its food production or for something else other than the food, or for any other thing which it produces at all, because this is considered leasing, and leasing land for farming is absolutely not allowed. It was narrated by al-Bukhari that the Messenger of Allah ﷺ said: **"Whoever has land let him plant upon it or grant it to his brother. If he declined let him hold his land."** Muslim also narrated, **"The Messenger of Allah ﷺ forbade a rent or a share be taken for the land."** The Sunan of An-Nisai states: **"The Messenger of Allah ﷺ forbade leasing the land. We said, 'O Prophet of Allah, can we then lease it for some of the grain." He ﷺ said, 'No.' We said, 'We used to lease it for the straw.' He ﷺ said, 'No.' We said, 'We used to lease it in return of that on the irrigating Rabee'a.' He ﷺ said, 'No, plant it or grant it to your brother.'"** What is meant by *Rabee'a* is the small stream, that is to lease it in exchange for planting the part which is

alongside the water. It was soundly narrated that the Messenger of Allah ﷺ forbade a rent or a share to be taken for the land, or to be leased for a third or a fourth of its harvest. Abu Dawud has narrated from Rafi'a ibn Khadeej that the Prophet ﷺ also said, **"Whoever has land, he has to plant upon it or let his brother plant upon it, and he cannot lease it for its third or fourth or a specified food."** Bukhari narrated from Nafi', who said, "'Abdullah ibn 'Umar was told from Rafi'a ibn Khadeej, who had said that the Messenger of Allah ﷺ forbade the leasing of land. So 'Abdullah ibn 'Umar went to Rafi'a and I went with him to ask Rafi'a who said: The Messenger of Allah ﷺ had forbidden the leasing of land." Nafi'a also mentioned that 'Abdullah ibn 'Umar had given up the leasing of the land.

These *Ahadith* explicitly show that the Messenger of Allah ﷺ forbade leasing of land. Although forbidding means the order to leave only, there is an indication (*Qareena*) that this order is decisive; since they said to the Prophet ﷺ, "We lease for part of the grains." He ﷺ said, **"No."** Then they said to him, **"We used to lease it for the straw." He ﷺ said, "No."** Then they said, **"We used to lease it for the Rabee'a." He ﷺ said, "No."** Then he confirmed this by saying, **"Plant it or grant it to your brother."** His insistence in forbidding is clear here which denotes the confirmation. Moreover, confirmation in the Arabic language is either literal, by repeating the word or by meaning. In this *Hadith*, the word was repeated which means confirmation.

With regard to leasing the land of Khaybar in return of its half, this is not part of this subject, because the land of Khaybar was planted with trees and not smooth (i.e empty of trees). The evidence for this was narrated by Ibn Ishaq in his Seerah of the Messenger of Allah ﷺ from 'Abdullah ibn Abu Bakr, **"The Messenger of Allah ﷺ used to send 'Abdullah ibn Ruwahah to the people of Khaybar to estimate the fruits between Muslims and Jews, so he estimated their part. After 'Abdullah ibn Ruwahah was martyred at Mu'tah, Jabir ibn Sakhr ibn Umayyah ibn Khansa'a, brother of Bani Salama, used to estimate the fruits of Khaybar."** Estimation is to determine the value of the fruits on the trees before it is collected. It is clear that the land of Khaybar was planted with trees and not smooth land. The plants which it contained were of a lesser size than the area of the trees, so the planted part follows the trees part in its identity.

The land of Khaybar was therefore not subject to a matter of leasing; it was rather sharecropping (*Musaqat*), which is allowed. Furthermore, after the prohibition by the Messenger of Allah ﷺ, the *Sahabah* abstained from leasing land, including 'Abdullah ibn 'Umar, which indicated that they understood the prohibition of leasing the land.

However, the prohibition of leasing the land is only if it is for farming. If its lease is for other than farming, it is allowed. A person is allowed to lease the land as a day pasture or a resting place (for cattle) or a warehouse for his foods, or to use it for anything other than farming. This is because the prohibition of the leasing of land is focused on its lease for farming, as is understood from the sound *Ahadith*. These rules of land and what is connected with it, explain the manner by which the *Shar'a* restricted the Muslim when he works to increase his ownership through farming.

11
Trading and Manufacturing

Trade

Allah ﷻ made the property a means to establish the interests of human beings in this *Dunya* (worldly life) and He ﷻ allowed trading as a way to gain these interests (*Masalih*). It is true to say that what everybody wants is not available in every location and that taking something by force and overpowering is corrupt. Thus, there should be a system that enables everybody to take that which he needs without resorting to force and strength. Trading is that system, and there are rules of selling. Allah ﷻ says,

يا أيها الَّذِينَ آمَنُوا لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلاَّ أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

"O you who believe! Squander not your wealth among yourselves in vanity, except it may be a trade by mutual consent." [An-Nisa: 29].

Trading is of two types; that which is allowed (*Halal*) and is called selling (*Bai'a*) in *Shar'a* and that which is forbidden (*Haram*) and is called usury (*Riba*). Each of these is trading. Allah has informed us about the disbelievers that they rejected rationally the (existence of a) difference between trading and usury. Allah ﷻ says:

ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا

"That is because they say: Selling is just like usury." [Al-Baqarah: 275]

He ﷻ then differentiated between them through *Halal* and *Haram* by

saying:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

"Whereas Allah permitted selling and prohibited usury." [Al-Baqarah: 275]

We understood from this that each of them is trading, and the one which is permitted by *Shar'a* is selling. The selling process is concluded by two parties. One of them gives the offer (*Ijab*) and the other accepts (*Qabool*). These are expressed with the word "I sold" and "I bought" or any words or action which hold these meanings. The owner of the commodity has the right to carry out the selling and to deputise somebody as an agent or as a messenger to execute the selling on his behalf. He is allowed also to employ a person to perform the selling on his behalf, on condition that his wage is defined. If he employed someone for part of the profit he would be a silent partner, and the rule of the partner rather than the employee will be applied upon him. He is also allowed to buy the property himself or through his agent, his representative or to hire a person who will buy for him. In summary, trading is allowed. It is a form of increasing the ownership, and it is evident in the laws of selling and company (partnership). Trading came in the Qur'an and the *Hadith*. Allah ﷻ said:

إِلاَّ أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلاَّ تَكْتُبُوهَا

"Save only in the case when it is actual trading which you transfer among yourselves from hand to hand. In that case it is no sin for you if you write it not." [Al-Baqarah: 282]

Rifa'a narrated that **he went out with the Messenger of Allah ﷺ to the prayer place and he saw the people trading. The Messenger of Allah ﷺ said, "O traders!" They responded to the Messenger of Allah ﷺ and raised their necks and eyes towards him. He ﷺ said, "Traders will be resurrected on the Day of Judgement as fujjar (wrongdoers) except those who were righteous and honest."** Al-

Tirmidhi reported that Abu Sa'id narrated that **the Messenger of Allah ﷺ said: "The honest trustworthy merchant will be resurrected with the prophets, righteous and the martyrs."** Trading is of two types, domestic and foreign. Domestic trading is the selling and buying which occurs among the people over commodities, whether they are of their own products, agricultural or industrial, or of other peoples products, where they are circulated in their own country. Domestic trading is allowed without constraints, except by those rules connected with selling. With regard to the commodities, their types, and their transfer inside the country from place to place, it is left to every merchant to trade within the rules of *Shar'a*. The State has nothing to do with the domestic trading except through supervision only. Regarding foreign trade, it is the purchase of commodities from abroad, whether such commodities were agricultural or industrial. This type of trading is subject to the direct supervision of the State, so it directly supervises the import and export of these commodities and supervises the belligerent and peaceful (those bound by treaties) merchants.

Manufacturing

Manufacturing is where a person requests another to manufacture for him a vessel, a car or anything that is included in industry. Contracting manufacturing is allowed and proved in the *Sunnah*. The Messenger of Allah ﷺ requested the manufacture of a seal (the ring used for a seal or a stamp). Anas said that **the Messenger of Allah ﷺ manufactured a ring.** Bukhari reported from Ibn Masoud who said that t**he Messenger of Allah ﷺ manufactured a ring of gold.** The Messenger of Allah ﷺ also requested the manufacture of the minbar (pulpit). Bukhari reported that Sahl said that **the Messenger of Allah ﷺ sent to a woman to and said: "Order your servant, the carpenter, to make me some board to sit on."** Bukhari narrated: **"People used to manufacture at the time of the Messenger of Allah ﷺ, and he kept silent about this,"** so his silence and action is his ﷺ agreement regarding manufacturing. The agreement and the action of the Messenger of Allah ﷺ are divine evidences like his sayings. The matter contracted for manufacturing is the manufactured thing such as the seal, pulpit, cupboard, car and the like. From this angle, manufacturing is a form of selling not hiring. However, if someone were to bring the raw material to the manufacturer and ask

him to manufacture a particular thing, then this would be a form of hiring.

Industry, by itself is an important pillar of the economic life in any nation and to any people in any society. Industry drive, in the past, was limited to the manual factory alone. When man started using steam to move machines, mechanical factories started to gradually replace the manual ones. When the new inventions came about a great revolution in industry occurred, thus production increased beyond expectation, and the mechanised factory became one of the pillars of economic life.

Rules pertaining to the mechanised and manual factories are rules of partnership, hiring, selling and foreign trade. With regard to establishing the factory, it could be by an individual property, which happens rarely, but is more generally by the property of many individuals who share in establishing it. Therefore, the rules of Islamic companies apply upon it. However, with respect to the work in the factory whether in management, manufacturing or other than these, the rules of hiring apply to it. With regard to the distribution of its production, the rules of selling and foreign trade apply to it. In this way, cheating, fraud and monopoly are prevented, as is the fixing of prices, as well as the other rules of selling. With regard to making orders for the production of the factory, whether little or great, before it is made, the rules of manufacturing apply to it. *Shar'a* has to be consulted regarding whether the client is obliged or not of what was manufactured for him.

12
The Laws of Partnership (Companies)

The Company (Partnership) in Islam

Company (*Ash-Sharika*) linguistically means mixing two or more shares together such that neither can be distinguished from the other. Company in *Shar'a* is a contract between two or more persons, in which they agree to perform financial work with the intention of making profit. The contract of the company requires the existence of both offer and acceptance, as is the case with all Islamic contracts. An offer occurs when one party says to the other: 'I entered into partnership with you in such and such' and the other party replies by saying, 'I accepted.' These actual words are not necessary but the meaning is. There must occur in the offer and acceptance something that indicates that one of the parties addressed the other orally or in writing on the matter of partnership over something, and the other accepted. Therefore, an agreement on partnership only does not represent a contract. An agreement to pay money or property for partnership is also not considered a contract as well. Rather, the contract must include the concept of partnership in something. The condition of validity of the partnership contract in Islam requires that the contracted matter be a right of disposal and that this right of disposal, over which the company contract is concluded, is suitable for representation (*Wakala*) such that what is gained by the disposal is shared between the two partners.

Partnership is allowed in Islam because when Muhammad ﷺ was sent as a Messenger people were dealing with companies and he ﷺ did not forbid this. Al Bukhari narrated that Abu Al-Minhal said: **"I and my partner bought something in cash and credit. Al-Bara ibn 'Azib came to us so we asked him about this. He said: 'My partner, Zaid ibn Al-Arqam, and I did the same and we asked the Prophet ﷺ about this.' He ﷺ said: 'That which is in cash you take, and that which is in credit you return it back.'"** Ad-Daraqutni narrated from

Abu Hurairah that the Prophet ﷺ said: **"Allah the Supreme said 'I am the third of the two partners as long as one of them does not betray his companion. If he betrayed, I would withdraw from them.'"**

Partnership is allowed amongst Muslims, *Dhimmi*s (non-Muslims living under Islamic authority), and between Muslims and *Dhimmi*s. So it is allowed for a Muslim to enter into partnership with a Christian, a fire-worshipper or other *Dhimmi*s. Muslim narrated from Abdullah ibn 'Umar who said: **'The Prophet ﷺ dealt with the people of Khaybar, who were Jews, for half of the land production of plant or fruit.'** In another narration by Bukhari from Aisha: **"The Prophet ﷺ bought food from a Jew in Madinah and he deposited his armour with him as security."** At-Tirmidhi narrated from Ibn 'Abbas who said **'The Prophet ﷺ passed away while his armour was left as a security in return for twenty cubic measures *(Sa'a)* of food which He took for his family.'** At-Tirmidhi narrated from Aisha that **'the Messenger of Allah ﷺ sent for a Jew asking him for two garments (and to wait) until (the time of) prosperity.'** Entering into partnership with Jews and Christians and other *Dhimmi*s is therefore allowed, as dealing with them is permissible. However, *Dhimmi*s are not allowed to sell alcohol and pork while acting as partners with Muslims. Prior to forming a partnership with a Muslim, a *Dhimmi* may have sold alcohol, the proceeds of which would be *Halal* for the company. Partnership is only valid between people whose right of disposal is allowed, for it is a contract based upon the disposal of property. It follows that it is invalid to form a company with a person who is prevented from disposal of property. It is also not allowed to enter into partnership with a person who is placed under guardianship, or a person whose right of disposal is not allowed.

Partnership is either a partnership of properties or a partnership of contracts. The company of properties is a company of assets, such as partnership in a property that has been inherited, bought or gifted. The company of contracts is the subject of discussion regarding increasing of ownership. From the examination of partnership contracts in Islam, and the divine rules (*Ahkam Shar'iyah*) related to them it can be concluded that there are five types of company in Islam. These are *Al-'Inan* (equal), *Al-Abdan* (bodies), *Al-Mudharaba* (two or more), *Al-Wujooh* (faces) and *Al-Mufawadha* (negotiation).

The Company of Equal (Al-'Inan)

This is two bodies (*Abdan*) associating with their properties. Namely, two persons associate with their properties and share the work dividing the profit between them. It is called a company of '*Inan* because they are equal in their right of disposal where '*Inan* means two riders in a race if their horses are equal and their race is equal, so their bridles ('*Inan*) are equal. This form of company is allowed by the *Sunnah* (of the Prophet) and *Ijma'a* of the *Sahabah* (consensus of the Companions). People have entered into this form of partnership since the time of the Prophet ﷺ and the *Sahabah*.

In this type of company, the capital is represented by money, because money represents the value of the properties and the sales. It is not allowed to enter into partnership over merchandise unless it was evaluated in monetary terms at the time of contract. Its value at this time represents the capital. It is a condition that the capital be defined and disposable. The partnership is thus not allowed to be formed over an unknown capital, absent property or a debt as the capital has to be referred to at the time of division and because the debt cannot be disposed with immediately and this is the aim of the company. It is not necessary that the two property shares are equal or of the same kind. However, they must be evaluated by one measure so that both shares become one property. It is, therefore, valid to become partners with, for example, Egyptian and Syrian money, but these should be evaluated by one value so that there is no difference between them and they become one of the same kind. It is a condition that the capital of the company be one property and common for both such that neither partner can differentiate his property from the other's. It is also conditional that the two partners have authority over the capital. The '*Inan* (equal) company is based on delegation and trust. The partners trust each other through handing over properties, and by delegating permission to each other to dispose of property. Once the company has been formed it becomes one entity. It is obligatory for the partners to start work themselves as the company is established upon their bodies. Neither of them is allowed to delegate another person to work for the company on his behalf. The company as a whole employs whom it wants and uses the body of whom it likes as its employee not as an employee for one of the partners.

It is allowed for any of the two or more partners to trade in whatever

way he feels is beneficial to the company. Each of the partners is also allowed to collect the price and make purchases, to litigate for and request payment of debt, to remit and accept remittance, and to return faulty goods. Each is allowed to hire and lease the capital of the company, as the benefits to the company are as good as the commodities, in a similar way to selling and buying. Each partner would be allowed to sell an item like a car for example, or to lease it in its capacity as a commodity for sale. The benefit to the company becomes like the commodity itself and is as good as this.

It is not conditional that the two partners have equal shares, but it is necessary that they are equal in the right of disposal. With regard to the capital, it is valid that the partners have different or equal shares, while the profit is divided as they stipulate. It is thus valid to stipulate equality in the profit or to give preference. According to what 'Abdurrazzaq narrated in Al-Jami', 'Ali (ra) said: 'The profit is according to what they stipulated.' With regard to losses in the 'Inan company, it is according to the capital share only. If their shares are of equal value then the loss between them is divided equally, and if the capital is divided in thirds then the loss is divided in thirds. If they stipulated other than that, no value will be given to their stipulations. The rule on loss is then executed without regard to their stipulations, by dividing the loss based upon the ratio of their capital shares. This is because the body does not lose property; rather it loses the spent effort only. The loss is thus carried on the capital and it is distributed according to the shares of the partners. This is because a company is a form of representation (*Wakala*). The rule is that the deputy is not held responsible for the loss but the loss is carried upon the property of the deputising person. Abdurrazzaq narrated in Al-Jami' from 'Ali (ra): "The loss (*Al-Wadhi'a*) is upon the capital and the profit is according to what they stipulated."

The Company of Bodies (Al-Abdan)

This is a company in which two or more persons participate by their bodies only, without their capital. They share in that which they gain by their labour of whether an intellectual or physical nature. Examples of such labours are by craftsmen who share in work using their craft and divide that which they profit amongst themselves such as engineers, doctors, fishermen, porters, carpenters, car drivers and the like. It is not

necessary that the partners be of the same craft, nor that they are all craftsmen. It is allowed that craftsmen of different crafts associate in an allowable (*Halal*) form of profit. Their partnership is valid (*Sahih*) just as if they were of the same craft. It is acceptable for the partners to perform a particular role in the company, so that one administers the company, another receives the money and the third works by his hands. This means that it is allowed for labourers in a factory to enter into partnership together, whether or not all of them understand the process of manufacturing. They can associate with other craftsmen, labourers, clerks and guards, and they can all become partners in the factory. However, it is stipulated that the work they associate together in for the purpose of making a profit be *Halal*. If the type of work is *Haram*, then to form a company undertaking such work is forbidden.

The profit in the company of bodies is distributed according to the agreement of the partners, whether equally or preferentially. For it is that which produced the profit and since it is allowed for the partners to differ in work, it is allowed that they differ in profit which is derived from the work. Each of the partners has the right to collect all of their wages from their employer, and to demand the price of the goods they manufactured from prospective purchasers. Similarly, the one who employed them or the one who bought goods from them has the right to pay all wages or to pay the whole price of the goods to anyone of them. He will be cleared of responsibility once he has made the payment to any one of them. Even if only one of the partners worked, the income is still divided amongst all of them, because the work is guaranteed by all of them together, and through their joint responsibility for the work. The wage in other words, deserves to be shared. In other words, the wage is for all of them as the responsibility is carried by all of them. None of them is allowed to deputise on his behalf a person as partner in the company or to employ a person to do the work on his behalf as a partner. He himself must be the one who handles the work directly as the contract stipulates this in this type of company. However, each partner is allowed to hire employees and such hiring would be by the company and for the company, even if only one of the partners handled the employment. The employee would then not be that partner's own deputy, agent or employee. The disposal of each partner would be on behalf of the company, and every one of them is bound by the work accepted by his partner.

This form of company is allowed due to what Abu Dawud and al-Athram narrated from Abu 'Ubaydah from his father, 'Abdullah ibn Mas'ud, who said: **"I shared with 'Ammar ibn Yasir and Sa'ad ibn Abu Waqqas in whatever we gained at the day of Badr. Sa'ad came with two captives, while 'Ammar and I brought nothing" and the Messenger of Allah ﷺ consented to this to both of them.** Ahmad ibn Hanbal said: **"The Messenger of Allah ﷺ associated them together."** This *Hadith* is an explicit evidence about the partnership of bodies of a group of the *Sahabah* to perform an action, which was fighting against the enemies, and to divide amongst themselves that which they gained in terms of booty if they won the battle. With respect to the rule of the booties being in disagreement with this partnership, this is not relevant to this *Hadith* because the rule of the booties was revealed after the battle of Badr. When this company of bodies occurred there was not yet any rule of booties. In addition, the rule of booties which was revealed after the battle did not abrogate the company which occurred before. Rather it clarified the shares of the benefactors, and the rule of the company of bodies remains as established by this *Hadith*.

The Company of Body and Capital (Mudharaba)

This is called loaning (*Qiradh*), and it is the partnership of a body with property. It means that one pays his property to another person so as to trade with it for him and the resulting profit is divided amongst them according to what they stipulated. The loss in the *Mudharaba* is not subject to the agreement of the partners but rather to that which came in the *Shar'a*. This loss is defined by *Shar'a* to be only on the property, none of it is upon the body (*Mudharib*). Even if the capital partner and the mudharib were to agree that the profit and loss is divided among them, the profit would be between them while the loss is only on the property. This is because the company is similar to representation (*Wikala*) and the agent (*Wakeel*) does not guarantee. The loss is upon the principal (*Muwakkil*) only. This is due to what 'Abdurraziq narrated in Al-Jam'i from 'Ali (ra): "The loss (*Al-Wadhi'a*) is on the property and the profit is according to what they stipulated." The body however does not lose property, it loses what it spent of effort only and the loss remains on the property.

Mudharaba would not be valid until the property is given to the worker (*'Amil*) and he is given a free hand over it, because *Mudharaba* requires handing over the property to the *Mudharib*. In *Mudharaba*, the share of the worker must be defined and the property used in the *Mudharaba* contract must be of a defined amount. It is invalid for the owner of the property to work with the *Mudharib*, even if he stipulated to do so. This is because he has no right to dispose of the property that belongs to the company, on the company's behalf. It is the mudharib who disposes and works, and he has full control over the property. This is because the contract of the company was concluded on the body of the *Mudharib*, and the property of the partner. It is not concluded on the body of the owner of the property, who is like a foreigner to the company and who does not have the right to dispose of anything which belongs to the company. However, the *Mudharib* is restricted in his disposal to that with which the owner of the property permitted. He is not allowed to disagree with him because he disposes by permission. If he permitted him to trade with wool only or he prevented him from shipping the goods by sea, the owner has this right to restrict him in these matters. However, this does not mean that the owner of the property disposes in the company. Rather it means that the *Mudharib* is restricted within the limits defined by the owner of the property. Despite this, the disposal in the company is confined to the worker (*Mudharib*) only, and the owner of property has no right of disposal.

One form of *Mudharaba* is where two properties (of two persons) enter into partnership with the body of one of them. So if two persons had between them three thousand of something, one of them having two thousand and the other one thousand, and the owner of the two thousand permitted the other to dispose of the capital so that the profit is divided between them by halves, the company would be valid. The worker would be the owner of the one thousand of the items as a *Mudharib* to the owner of the two thousand, and would also be his partner. Similarly, *Mudharaba* could be through the partnership of the capital of two persons and the body of a third person. All these are forms of the *Mudharaba*.

Mudharaba is allowed by *Shar'a* due to the narration that **"Al-'Abbas ibn 'Abdul-Muttalib used to pay the property of the Mudharaba and put certain conditions on the Mudharib." This (information) reached the Messenger of Allah ﷺ and he consented to it.** *Ijma'a* of the *Sahaba* was established that the *Mudharaba* is allowed. Ibn Abu Sheeba narrated from 'Abdullah ibn Hameed from his father from his grandfather "that 'Umar ibn Al-Khattab gave him the property of an orphan as a *Mudharaba* so he worked with it and gained a profit, and 'Umar divided the surplus with him." Ibn Qudamah narrated in Al-Mughni from Malik ibn al-'Alaa ibn 'Abdurrahman from his father from his grandfather that "'Uthman loaned him property as a *Mudharib* (*Qaradh*)." It was also narrated from ibn Mas'oud and Hakeem ibn Hizam that 'the two of them entered into loan (*Qaridha*).' All of this occurred with the knowledge of the *Sahaba* and none was reported to disagree with the proceedings or deny their validity, confirming their *Ijma'a* on the *Mudharaba*.

The Company of Reputation Faces (Wujooh)

This company is an association of two bodies with the property of a third, namely a person gives his property to two persons or more as a *Mudharaba*, so the two mudharibs are partners in the profit through the property of another person. They may agree to divide the profit in thirds, to each mudharib a third and to the owner a third. They may also agree to divide it in fourths, where the property takes a fourth, one of the mudharibs takes a fourth and the other takes a half. Or they may agree on conditions other than these so that it is possible that there are preferential shares of the profit between the two workers. Their claim to preferential shares of profit is based on the reputation (*Wajaha*) of one or of both of them, whether in regard of their profession in work or of their skills in disposal and management, despite the fact that the right of disposal they have in the property is equal. This company is therefore different from the company of *Mudharaba*, although in reality it reverts to *Mudharaba*.

Among the companies of *Wujooh* is when two or more persons associate in what they buy using the trust of merchants in them, and the reputation that is based on this trust, without having property. They would agree that the property they bought is owned by them in halves or thirds or fourths or the like, and they sell that property. What they gain of profit is divided between them in halves, thirds or fourths or whatever

else they agree, and not based on the previous agreement of the share of ownership. However, the loss is in proportion of their shares of the purchased goods, because these shares represent their property and not according to what they may agree about the loss, nor according to their share of the profit, whether the profit was divided between them according to the value of their purchases or otherwise.

Thus the company of the *Wujooh* with its two forms is allowed. This is because if the partners associated with the property of another person it is like the *Mudharaba* company, which is confirmed by the *Sunnah* and *Ijma'a*. If, however they associated with what they take from the property of another person, by buying goods through their reputation and the trust of the merchants in them, then it is like the company of *Abdan*, which is also confirmed by the *Sunnah*. The company of *Wujooh* is thus confirmed by the *Sunnah* and *Ijma'a*.

However, it is necessary to know what is meant by trust in this regard. When trust is mentioned in the matters of trading and company matters and the like, it is meant to be the trust in payment, which is the financial trust, not notability nor esteem. Therefore, a person may be a notable person yet he is not trusted to pay, so there is no financial trust in him and thus there is no trust in him in the subject of trading and partnership. He could be a minister, a rich man or a great merchant, but if he is not trusted to pay, there is no financial trust in him nor is he trusted in anything. Therefore, he cannot buy any goods from the market without paying its price. Yet could be a poor person, but if the merchants trust him to pay his debts, he can buy goods without paying their price immediately. In the company of *Wujooh*, the trust is thus focused on payment not on notability. What occurs in some companies is that a minister of the government is included as a member in the company and assigned a certain share of the profit, while he contributes no property nor participates with any effort. He is associated as a partner due to his standing in society so as to facilitate the dealings of the company. This is not considered as a wujooh company nor does the definition of a company in Islam apply to it. This type of partnership is not allowed and such a person is not a partner and he is not allowed to take anything from such a company.

What happens in some countries like Saudi Arabia and Kuwait is that

the non-Saudi or the non-Kuwaiti person is not allowed to have a license for trading or working so he includes a Saudi in Saudi Arabia or a Kuwaiti in Kuwait as a partner. He assigns to him a share of the profit, while the Saudi or Kuwaiti person does not contribute any property or his body to the company, rather he is considered a partner because the licence is issued in his name and he is given a share in the profit in return for this. This type of company is also not considered of the company of wujooh, nor is it allowed by *Shar'a*. Such a Saudi or Kuwaiti is not considered a partner and it is not *Halal* for him to take anything from the company, because he does not fulfil the conditions which the *Shar'a* requires in the partner in order to become a legal partner. These conditions include associating in the property or by his body or by the trust in payment, so that he works with the goods he takes through this trust.

Company of Negotiation (Mufawadha)

This is where two partners share in all the types of companies mentioned before, like a combination between the companies of *'Inan*, *Abdan*, *Mudharaba* and *Wujooh*. For example a person may contribute some property or capital to two engineers in partnership with their properties so that they build houses to sell. The two engineers agree to work with property greater than that which they hold, so they start to take goods without paying for them immediately, based on the traders' trust in them. Thus, the partnership of the two engineers together with their bodies is a company of bodies. With regard to their craft and paying for property with which they work, it is a company of *'Inan* (equal). The fact that they take property from other people means it is a company of *Mudharaba*. As they share in the goods which they buy based on the trust of the traders in them means it is a *Wujooh* company. This company has therefore combined all the types of companies allowed in Islam. It is valid because each type of these companies is allowed by itself and they are also valid together. The profit is according to their agreement. It is allowed to make it proportional to the two properties. It is also allowed to make it equal even if the properties are different. And it is allowed to make it preferential even if the properties are equal.

This type of company of negotiation is allowed, because the *Shari'ah* text allows it. Some jurisprudents have, however, mentioned other types

of negotiation company, where two persons participate, such that they are equal in their property, their right of disposal and their debts and each of them can deputise for his colleague in absolute terms. This type of company is absolutely prohibited. There is no *Shari'ah* text that is a proof for it. As for the *Hadith* which they quote to say: 'If you negotiate then improve the negotiation' or the *Hadith*, 'Negotiate as it is more blessing,' neither of these two *Hadith* have proven to be valid (*Sahih*), even assuming that their meaning is correct. Moreover, this company is a partnership of unknown property and unknown action, which is enough by itself to make the company invalid. Additionally, included in their property is the inheritance which is given to them after the death of an inheriting person, and one of the partners could be a *Dhimmi* (non-Muslim). How then could he receive a share of the inheritance? Further, it is not allowed, because the company includes deputation, which is not allowed over unknown things. All this indicates the invalidity of this type of negotiation company.

Dissolving the Company

The company contract is one of the contracts which is allowed by *Shar'a*. It becomes void by the death of any partner or his becoming insane or if he was declared incompetent and put under guardianship, if it is a company consisting of two persons. Dissolution of the company by one of the two partners is valid because it is a permissible contract, which is annulled in the same way as deputation (*Al-Wikala*). If one of the partners dies leaving behind a mature inheritor, he has the option to continue with the company and his partner has to permit him to dispose (*Tassaruf*) in the company. However, he also has the option to demand dissolution of the company. If one of the partners demands dissolution of the company then the other partner must accept his request. If they were more than two partners, and one of them demanded the dissolution of the company and the rest were happy to continue with the company, then the existing company would be dissolved and renewed between the remaining partners. However, there is a difference between the *Mudharaba* company and the other types of companies regarding the dissolution. In the *Mudharaba* company, if the worker demanded the sale of the company and the *Mudharib* demanded division, then the demand of the worker will be accepted because his right is in the profit which will not

be known except when selling. However, in the other types of company, if one partner demanded division and the other demanded sale of the company, the demand of division is accepted rather than that of sale.

13 Capitalist Companies

The company in the Capitalist system is a contract according to which two persons or more are bound to associate in a financial project by providing a share of property or work, so as to divide amongst themselves the profit or loss which may result from this project. It is of two types: companies of people and companies of properties.

With regard to the companies of people, they are those in which the personal element exists and it has an effect upon the company and in assessing the shares. This is like the commercial companies of joint liability and the simple limited partnerships. This type is different from the companies of properties where the personal element does not exist, nor does it have any consideration or effect. Rather, it is based on annulling the existence of the personal element, and considers only the financial element in the establishment and performance of the company, like the joint stock (share) companies and the limited (share) companies.

Commercial Company of Joint Liability (Unlimited Liability Company)

This is a contract between two persons or more, in which they agree to trade together under a certain name. All its members bind themselves towards the debts of the company with all their wealth, with joint liability, and without any limit. Therefore, no partner of the company can concede his rights in the company to another person without the permission of the remaining partners. The company is dissolved by the death of any of the partners or by his incompetence, bankruptcy or insanity, unless there is an agreement which prevents this. The members of this company are liable jointly towards its commitments to others by fulfilling all the contractual commitments of the company, and their responsibility in this matter is unlimited. Every partner is held accountable to discharge all

the debts of the company, not only from the property of the company but if necessary from his own property. He has to pay from his property what is left unpaid of the debts of the company after its property runs out. This company does not allow extension of the project. The company is formed from a few people, who trust each other and know each other well. The main element considered in this company is the personality of the partners, not by being people only but with regard to their standing and influence in the society.

This company structure is invalid, because the stated conditions disagree with the conditions of companies in Islam. For the divine rule (*Hukm Shar'i*) places no condition upon the partner except that he is allowed to dispose, and the company should have the option of expanding its activities. If the partners agree to expand the company by either increasing their capital or by adding other partners to them, then they are free to do what they like. The partner is also not responsible, personally, in the company except in proportion to his share in it. He has the right also to leave the company at any time he likes without the need for the approval of the other partners. In addition, the company is not dissolved by the death of any of the partners, or due to his incompetence, rather his partnership alone is dissolved, while the partnership of the other partners remains if the company is formed of more than two persons. These are the *Shari'ah* conditions. The conditions of the joint liability company as stated earlier differ, and even contradict with these divine conditions, thus making it an invalid company and it is not permitted by *Shar'a* to associate with (or becoming a partner) in it.

Joint-Stock Company (Share Companies)

Share Companies are companies formed of partners who are unknown to the public. The founders of the Share Company are all of those who signed the initial contract of the company. The initial contract is the one which initiates between its signatories a commitment to work for achieving the common aim, which is the company. Subscription in the company is undertaken by the commitment of the person to buy one share or more in the proposed company in exchange for the nominal value of the share. This form of company is one of the forms of disposal by an individual will, where it is enough for the person to buy the

shares so as to become a partner, whether the other shareholders accept him or not. Subscription occurs in two ways. In the first instance, the shares of the company are restricted to the founders who distribute them amongst themselves without offering them to the public. This is done by writing the constitution, which organises the company and includes the conditions upon which the company proceeds, then signing it among themselves. Everyone who signs the constitution is considered a founder and a partner, and once they all have signed, the company is founded. The second way of subscription is that which is most prevalent in the world, where a few people establish the company and lay out its constitution. Then the shares are offered to the public for general subscription in the company. When the time of subscription expires, the constituent assembly of the company will be invited to meet and review the system of the company for agreement and to appoint its board of directors. Every shareholder, irrespective of the number of shares he holds, has the right to attend the constituent assembly, even if he owns only one share. The company commences its activities once the time of subscription expires.

Both of these means represent one form which is to pay for the properties. The company would not be considered as established except by completing the signature of the founders in the first method, and by the expiry of the subscription time in the second one. So the contract of the company is a contract between properties only.

There is absolutely no personal element in it. Thus the properties, rather than their owners, are the partners. These properties are entered into partnership together without the existence of any person. Accordingly, there is no authority for any partner, no matter how many shares he holds, to take charge of the activities of the company in his capacity as a partner. He also has no right to work in the company or to control any of its functions in his capacity as a partner. Rather, the one who takes charge of the activities of the company, works in it, controls it and supervises all of its work is called the Managing Director who is appointed by the board of directors. This board of directors is elected by the general assembly, in which every person has votes equal to his shares, not according to his personality, for the real partner is the capital and it is this which defines the number of votes. So every share has a vote and not every person has a vote. Thus, there is no consideration to the

subscribing person but the consideration is for the capital only. Moreover, the share company is considered to be permanent, and it is not restricted to the life of the shareholders. The shareholder may die and yet the company is not dissolved and he may become incompetent and still remain a partner in the company. With regard to the capital of the company, it is divided into equal-valued shares, which are called stocks. The shareholder is a partner whose personal merits are not thoroughly investigated, and his responsibility is determined by his share in the company capital. In addition, the partners are not bound by losses except by the amount of their stocks in the company. A partner's share is liable to circulation, so he is allowed to sell it, or associate other people in his shares, without the permission of the remaining partners. The stocks owned by every person are currency notes, securities or bonds that represent the capital. These stocks may be for the bearer (anonymous bonds) or designated to their holder where their ownership moves from person to person. The investor who subscribes by buying stocks is obliged only to pay their nominal value. So the stock is a part of the entity of the company, and it is indivisible, but it is not a part of its capital.

The stock notes are considered as registration papers in this share, and their values are not the same, but change according to the profits or losses of the company. This profit or loss is not the same every year but it can differ. The stocks therefore do not represent the capital contributed at the time of establishing the company; they represent the capital of the company at the time of its sale, namely at a specific time. They are like paper currency whose value falls if the stock market declines and increases when the stock market rises. The value of stocks declines when the company makes losses, and increases when the company profits. The stock after the company is formed thus ceases to be a capital and becomes a currency paper of a specific value that rises and falls according to the market, the profitability of the company or according to the degree of interest or otherwise of the people in it, for it is a commodity subject to supply and demand. Stocks transfer from one hand to another similar to how bank notes move among people, without any clerical measures in the company records if the stocks are for the bearer (anonymous) and through such measures if they bear their holders' names.

The company is considered in profit if the value of the assets of the

company is greater than the value of its liabilities at its annual inventory. Profits are distributed annually at the end of the financial year of the company. If the value of the company's assets increased due to unexpected conditions without there being profits, nothing prevents the company from distributing this excess. However, if the contrary occurred, and the value of the assets declined and the company made profits, but the total of its profit and value of its assets was not greater than its liabilities, then it could not distribute the profits. At the time of distribution of profits, a part of it is assigned to the reserves and that which remains is divided among the shareholders. The company is considered as a corporate entity, which has the right to sue and be sued in its own name in the courts. It also has its own residence and particular nationality (country of incorporation including where its head office may be registered). Neither a shareholder nor any member of its management, in his capacity as partner or in his personal capacity, fills its place. The only one who has this right is the one who has been authorised to speak on behalf of the company. The one who has the right of disposal is the company, i.e. the corporate personality, rather than the person who disposes directly.

This is the stock company and it is a void company in *Shar'a*. It is one of the transactions that a Muslim is not allowed to participate in. The reason of its invalidity, and the prohibition of associating with it, appear clearly from the following points:

1) The definition of company in Islam is as follows: it is a contract between two or more persons, in which they agree to carry out financial work with the intention of gaining profit. It is thus a contract between two or more persons, so an agreement from only one side is unacceptable. Rather, it is necessary that the agreement occurs from two or more sides. The contract of the company must be focussed on performing financial work with the aim of making profit, and not on paying the capital. It is also not enough that the aim be partnership only. Carrying out the work is the basis of the company contract, and financial work has to be by the two contractors, or by one of them together with the capital of the other. A contract between two persons in which a person other than these two contractors (signatories) carries out financial work is not legitimate and no one is bound by it. This is because it is only the contractor who is bound with the contract; it applies to his own

disposal (dealings) and not on others. So carrying out the financial work must be limited to the contractors, either by both of them or by one of them with the capital of the other. The necessity of carrying out financial work by one of the signatories (partners) in order that the company is legally established makes it inevitable that there must exist a body in the company upon which the contract is concluded. In Islam it is, thus, a condition that the body exists in the company, and it is a fundamental element in concluding a company. If the body existed the company will be established and if the body does not exist in the company, then it is not established and doesn't exist in the first place.

Capitalists define the joint stock company as a contract according to which two or more persons contribute to a financial project by providing a share of capital in order to divide the profit or loss that may result from the project. It appears, from this definition and from the reality of forming the company by the aforementioned two methods, that it is not a contract between two or more persons according to the divine law (*Shari'ah*). This is because legally, a contract is an offer and acceptance between two parties of two or more persons. There must be two sides in the contract. One of them is entrusted with the offer by speaking first with the offer of the contract. This Statement could be something like 'I married to you' or 'I sold to you' or 'I leased to you' or 'I associated with you' or 'I granted to you.' The other side is entrusted with the acceptance, such as to say 'I accepted' or 'I agreed' or the like. If the contract is devoid of the existence of two sides, or an offer and acceptance, then it would not be established, and accordingly it would not be a divine contract.

In the joint stock company, the founders agree on the conditions of partnership. They are not directly and actually involved in the partnership when they agree on the conditions of the company, rather they only negotiate and agree on the conditions. They then draw up a document, which represents the constitution of the company. This document is then signed by everyone who wishes to enter into the partnership, the signature being considered as an acceptance. Once a person does this, he is then considered as a founder and a partner. In other words his partnership is established once he put his signature or when the subscription period comes to an end. In this process it is evident that there are no two sides who concluded the contract, nor is there an offer

and acceptance. Instead, there is one party who agrees on the conditions, and by its acceptance becomes a partner. It can be seen that the joint stock company is not an agreement between two parties, rather it is an agreement of one party on certain conditions. Thinkers on the Capitalist economy and Western law say that the commitment in this type of company is a type of disposition by individual will. The individual will occurs when any person commits himself with a certain matter from his side towards the public or another person, irrespective of the acceptance or non-acceptance of the public or the other person, such as a promise to give a prize. The joint stock company, in their view and in reality, is where the shareholder or the founder or any person who signs a document commits himself with the conditions contained in the document regardless of the acceptance or non-acceptance of the others. Thus they consider it as a type of disposal by individual will. The contract of the joint stock company by the individual will is invalid (*Batil*) in *Shar'a* because a contract in *Shar'a* is the linking of an offer originating from one of the contractors with the acceptance of the other contractor in a way that reveals its effect in the issue over which the contract is concluded. This does not occur in the contract of the share stock company as no agreement between two or more persons occurs in the contract. Rather, one person commits himself, according to this contract, to share in a financial project. Regardless of the number of contractors and partners who committed themselves to that project, the one who committed himself is still considered as one person.

It may be argued that the partners agreed together on the conditions of the company, so their agreement is considered to be an offer and acceptance, and that the writing of the document is just a formal matter to record the contract which they agreed upon. So why is this not considered a contract? The answer to this question is that the partners agreed together on the conditions of the company. However, according to their agreement they did not consider themselves actually partners, and they did not commit themselves by such an agreement to the conditions of the company. It is allowed for any of them to withdraw and not to associate after their agreement on the conditions has been made and after the document has been written. None of them is committed to their agreement over the conditions, according to their technical terminology, except after he signs the contract. Once he signed the contract he becomes committed, while before that he is not committed

to or bound by anything. Therefore, their agreement on the conditions before signing the contract is not considered, in their view and in the view of the *Shar'a*, as a contract. This is because the agreement over the conditions of partnership, and over the partnership, is not considered a company contract. According to their agreement, they are not considered obliged to it before the signing, whereas the contract is that which the two contracting sides are obliged with. Therefore, their agreement on the conditions of the company and on partnership is not considered offer and acceptance. It is not considered, according to the divine law and even in their own view as a contract.

It may also be said that the acceptance of the partner to sign the contract should be considered as an offer from his side towards the others and the signature of the next person is considered as acceptance. It may be asked why offering the document detailing the contract is not considered an offer and its signing not considered acceptance. The answer is that every partner who signed the contract has only accepted, but the offer did not originate from any particular person. There is no offer, either from the founders or from the first signatory; there is only acceptance from every partner. Thus the signatory accepts and commits himself with the conditions without them being presented as an offer of disposal from anyone, without anyone saying to him: 'I shared with you.' The action of giving him the document for signature is not considered an offer. The reality of the share stock company is that every partner has only accepted, and acceptance added together with acceptance is not considered a contract in *Shar'a*. There must exist an offer in words which indicates offer not acceptance. The acceptance then comes after that in words, which indicate this explicitly. Nobody who signed the company document is therefore considered an as an offerer; they are all acceptors. Thus, only acceptance without offer has originated in the share stock company, so the company is not concluded.

The Capitalists call the document of the company its constitution and consider this as a contract. They also say that the contract was signed. However, in *Shar'a*, this document is not considered a contract for a contract is an offer and an acceptance between two parties. The share stock company is therefore not considered a contract in *Shar'a*.

In addition, there is no agreement in the contract to undertake financial

work for the purpose of gaining profit. Rather the founder or the subscriber agrees to pay money into a financial project, so it is devoid of the element of an agreement to carry out work. Instead it only contains the individual commitment from the person to provide property, without any reference to the work in that commitment. Only carrying out the financial work rather than partnership is the aim of the company, and so the absence of agreement to carry out work in the contract negates the contract. A company does not, therefore, merely exist because there is an agreement to contribute capital only, as there is no agreement to carry out the financial work. From this discussion it can be concluded that the company is invalid (*Batil*).

It can be argued that the document of the company may have included the type of work, which the company carries out, such as production of sugar or trading. There was, therefore, an agreement to carry out financial work. However, the type of work mentioned is the work, which the company may carry out and no agreement existed on the part of the partners that they will indeed carry it out. They only agreed on being partners and on the conditions of the company while conducting the work was left to the corporate personality, which the company would have after its establishment. Thus, no agreement occurred between the partners to carry out any financial work themselves.

In addition to this, it is necessary that the body (*Badan*) which is the disposing person exists in the company in Islam. What is meant by the body (*Badan*) in the company, in trading (selling), hiring and the other contracts is the disposing person, not the physical body or effort. So, the existence of the body is an essential element in establishing the company. If the body did not exist, the company could not have been established. The share stock company has no body (*Badan*) at all, and in fact it intentionally removes the personal element from the company. The contract of the share stock company is a contract between properties only. The personal factor does not exist as the properties alone and not their owners are associated with each other.

In other words, the properties associate with each other without the existence of a body. The absence of an associating body means the company is not established and it is invalid in view of the *Shar'a*. *Shar'a* dictates that the body is the disposer of the property, and the disposal of

the property depends upon it alone. If the body does not exist, then disposal cannot exist.

The people who own the capital are the ones who directly agree on the subscription of the properties, and they elect the board of directors who carry out the work in the company. However, this still does not mean that there is a body in the company, for their agreement is upon making the property as a partner rather than themselves as partners. So the property and not its owner is the partner. With regard to their election of the board of directors, this does not mean that the board are their deputies. Rather their property has been represented by deputies (i.e. the board) selected by them, and no deputation was made on their own behalf. The evidence for this is that the shareholder has votes equal to his shares, so the person who has one share would have one vote or one deputy. The person who has one thousand shares would have one thousand votes; that is one thousand deputies. So the deputation is on behalf of the property and not the person. This indicates that the element of the body is missing from the company, which is composed of the element of property only.

The definition of the share stock company thus indicates that it does not contain the necessary conditions required for establishing a company according to Islam, as no agreement occurs between two or more persons. Rather it is a commitment made by an individual will from one side. Furthermore, no agreement has occurred to carry out a work; instead, one person commits himself to offer property. There is also no body which practises the disposal in his personal capacity, rather it is only property without a body. The contract of the share stock company is thus invalid. It is invalid, because it was not established as a company, as defined by Islam.

2) The company is a contract over the disposal of property. Thus, the increase of the property by using a company is an increase of ownership. Increasing ownership is one of the disposals allowed by *Shari'ah*. All the *Shari'ah* disposals are verbal disposals which originate from a person and not from property. The increase of the ownership must result from the one who can dispose, that is, from a person and not from property. The share stock company assumes the increase of property by itself without a partner which is a body, and without a disposing person entitled with

the right of disposal. Instead, it assigns the disposal for the property, because the share stock company consists of properties gathered together and got the right of disposal. The company is accordingly considered a corporate personality, which alone has the right of legal disposal like selling, buying, manufacturing and suing. The partners do not have a legal right of disposal; rather the disposal is confined to the personality of the company. In the Islamic company, the disposal originates only from the partners, and each one of them disposes by permission of the others. The property of the partners as a whole does not have the ability of disposal; disposal is confined to the person of the partner. The actions which originate from the company in its corporate personality are therefore invalid in the view of *Shar'a*. This is because the disposal should originate from a certain person and this person should be one of those who has the right of disposal (partners), a matter which is not fulfilled in the share stock company. It is incorrect to say that those who carry out the work are the hired labourers and that are employed by the shareholders who are the owners of the capital. And that the ones who handle the administration and disposal are the director and his board, who are deputies of the shareholders. This is because the partner is designated personally into the company, and the contract of the company was concluded on him personally so he is not allowed to deputise somebody to carry out the activities of the company on his behalf, nor to hire somebody to carry out the activities of the company on his behalf. He must carry out the activities of the company by himself. Therefore, the partners are not allowed to employ labourers to carry out the work on their behalf, nor to deputise a board of directors on their behalf. Also, the board of directors is not a deputy of the shareholders, it is merely a deputy of their properties, because the person who is elected to the board is elected by the votes which are according to the amount of shares in the company not the actual shareholders. Moreover, the director and the board of directors do not have the right of disposal in the company for the following three reasons:

Firstly, they act as deputies for the shareholders, who are the partners by electing them. The partner should not deputise for himself, because he is the one on whom the company was concluded. This is similar to the fact that it is also not allowed for somebody to deputise another person to marry on his behalf. He is, however, allowed to deputise somebody to make the marriage contract on his behalf. Similarly, he is not allowed to

deputise somebody to enter into partnership on his behalf. However, he is allowed to deputise somebody to conclude the company contract on his behalf, but not to be a partner on his behalf.

Secondly, the shareholders who are also the partners have deputised the board on behalf of their properties not on behalf of themselves. The evidence for this is that the election votes themselves are considered for deputation, and these votes are considered according to the quantity of shares and not according to the shareholders. The deputation is thus on behalf of their properties and not on behalf of their persons.

Thirdly, shareholders are partners of property only and not partners of body. The partner of property has absolutely no right of disposal in the company. It is not valid for him to deputise somebody to dispose in the company on his behalf. Thus, the disposal of the company's manager and the board of directors is considered invalid in *Shar'a*.

3) The fact that the stock company is permanent contradicts *Shar'a*. The company is legally of the type of permissible contract which becomes null by the death, insanity or the incompetence of any one of the partners and by dissolution requested by one partner when it is formed of two partners. If the company was composed of more than two partners, then the partnership is dissolved if a partner dies or becomes insane or is judged as incompetent. If one of the partners died and he has a person to inherit from him, then the matter is examined. If the inheritor is not mature he has no right to continue in the company. If he is mature, he has the choice to endorse the company and the other partner gives him the permission of disposal, or to demand the dissolution of the company. If the partner was judged incompetent, the company is dissolved, because it is necessary that the partner has the ability of disposal. If the share stock company is permanent, and it continues to function despite the death or the incompetence of any of the partners, then it is invalid (*Fasid*). This is because it included an invalid condition which is related to the entity of the company and the nature of the contract.

In summary, the share stock company is not established as a company in the first place, for those who exist are partners of property only and there is no partner of body. The presence of a partner of body is an essential condition, for the company is established as a company by him

and, without him, it would not have been established. In the share stock company however, partnership in the view of those who form it, exists by the presence of partners of property only. The company functions and conducts activity without the existence of a partner of body. It is thus, an invalid company as it was not established as a company according to the *Shar'a*. Those who carry out the actions in the company are the board of directors who are deputies for the shareholders, that is for the property partners. The partner is not allowed, in *Shar'a*, to deputise somebody with the right of disposal in the company on his behalf whether he was a property partner or a body partner. The contract of the company is concluded on him personally, so he has to act by himself. It is incorrect to deputise or hire somebody who takes charge of disposal and action in the company on his behalf. From *Shar'a* view, the partner of property only has no right of disposal in the company, nor has he the right to work in the company as a partner in any way. The right of disposal and to work in the company is confined to the partner of body only. Moreover, the share stock company becomes a corporate personality which has the right of disposal. However, these actions are only accepted in *Shar'a* from a person who has the competence to dispose and is mature and sane, with a discerning mind. Any action that does not originate in this sense is invalid from the viewponit of the *Shar'a*. Entrusting the disposal to a corporate personality is thus not allowed, rather it should be referred to a human being who has the competence of action. It can be concluded that the share stock companies and their actions are invalid. All the properties earned through them are invalid properties which were earned by invalid actions, so they are not allowed to be owned.

Shares of the Share Stock Company

The shares of this type of company are currency notes which represent the value of the company at the time of its evaluation not the capital of the company at the time of its establishment. The share is an indivisible part of the entity of the company and it is not a part of its capital. It is a form of security paper representing the value of the company's assets. The value of the shares is not fixed and can change according to the profits or losses of the company. It is not fixed for all years but can change. The share stocks do not therefore represent the capital paid at the time of the establishment of the company but the capital of the company

at the time of selling at a certain time. It is like the currency paper or bank note whose value falls when the market declines and rises when the share market rises. The share thus ceases to be capital after the company starts its work; rather it becomes a currency note which has a certain value.

The divine law (*Hukm Shar'i*) with regard to currency notes must be examined. If they are security notes which include sums of *Halal* money like the currency notes which are backed by an equivalent amount of gold or silver or the like, then buying or selling them is allowed (*Halal*) because the property they include is *Halal*. However, if they were security notes that represent sums of *Haram* property like bonds of debt in which the property is invested by usury, or bank stocks and the like, then their trade is prohibited (*Haram*) as the property they represent is *Haram*. The shares of the stock companies are security notes which include mixed sums of *Halal* capital and *Haram* profit through a contract and transactions which are considered invalid in *Shar'a*, without any distinction between the original property and the profit. Each security note represents the value of a share from the assets of the invalid company. These assets have been earned by an invalid transaction forbidden by *Shar'a*, so this property is *Haram*. The stocks of the share stock company, thus, include sums of *Haram* property. Consequently these currency notes which are shares, are *Haram* property, and are forbidden to be sold, purchased or dealt in.

The above discussion raises questions about the Muslims who buy shares of these companies, associate in establishing them, or hold shares due to their subscription in such companies. Was their action *Haram*, even though they were ignorant of the divine law (*Hukm Shar'i*) at the time of their subscription into these companies? Or if some scholars, who did not understand the reality of the share stock company, gave them a fatwa (of permission) with regards to them, are these stocks and shares which are owned by them *Halal* properties, even though they were earned by a void transaction in *Shar'a*? Or are they *Haram*, and accordingly not legally owned by them? And are they allowed to sell these shares to other people or not?

The answer to these questions is that ignorance of the divine law (*Hukm Shar'i*) is not an excuse, because it is compulsory upon every Muslim to learn about that which he needs in his life of the divine laws

(*Ahkam Shari'ah*) so that he can carry out all his actions according to the divine law. If that law is one of those laws which are usually unknown for such persons, then he is not blamed for that action and it would be a valid action for him, even though it is invalid in *Shar'a*. This is because of the narration: **"the Messenger ﷺ heard Mu'awiya ibn Al-Hakam praying for someone who sneezed while he was in prayer. After they finished the prayer, the Messenger of Allah ﷺ taught him that speaking during the prayer would nullify it, and praying for the one who sneezes nullifies the prayer, but he (Messenger of Allah ﷺ did not order him to perform the prayer again."** This is the meaning of what was narrated by Muslim and An-Nisai from `Ata'a ibn Yasar. This is because the rule (not talking during the prayer) was usually unknown to such a person and so the Messenger of Allah ﷺ excused him and considered his prayer valid. The prohibition of the share stock companies in view of the *Shar'a* is one of the rules whose like is unknown to many Muslims and so their ignorance can be excused. The action of those who took partnership in them is considered valid, though the companies are invalid, like the prayer of Mu'awiya ibn al-Hakam which is considered valid though he did something in it that invalidates it, as he did not know that talking during prayer invalidates it. The fatwa given by the scholars also takes the rule of ignorance with respect to the one who seeks the opinion. However, the scholar who gives the opinion is not excused because he did not exhaust his effort to understand the reality of the share stock companies before he gave an opinion about them. With regard to the ownership of the shares by the shareholders, it is a valid ownership and these shares are *Halal* properties so long as *Shar'a* judged that their action was valid. It is not invalid as they are excused for being ignorant of its invalidity. Selling these shares to Muslims, however, is not allowed, because in *Shar'a* they are invalid currency notes and the allowance of their ownership is incidental, i.e. based upon ignorance of the hukm that was excused. When the divine law about it becomes known, then it becomes a *Haram* property that is not allowed to be sold or bought, nor can one delegate other Muslims to sell it for him.

The way to dispose of these shares which were owned due to the ignorance of the divine law is to dissolve the company or transform it into an Islamic company. Alternately one can find a non-Muslim who considers the shares of the share stock company allowed and delegate him to sell the shares on his behalf and then receive the subsequent

proceeds. It was reported from Suwaid ibn Ghafala "that Bilal said to 'Umar ibn Al-Khattab: "Your administrators (*'Ummal*) take wine and pigs as *Kharaj*." He said, "Don't take (these things) from them, but delegate them to sell them and take their price" narrated by Abu 'Ubayd in Al-Amwal. No one denied this action from 'Umar, though it would have been denied if it disagreed with *Shar'a*, so it became *Ijma'a*. Wine and pigs are of the properties of the *Dhimmi*s and cannot be properties for Muslims. When they wanted to give them to Muslims in exchange for *Jizya*, 'Umar ordered Muslims not to accept them, but to delegate them to sell them and take the proceedings. Since shares are of the Capitalists' properties and cannot be of the properties of Muslims, and they were passed to Muslims hands, so it is not valid for Muslims to take them. Instead they have to delegate to them their sale. Just like the right of Muslims in *Jizya* and *Kharaj* has been confirmed in wine and pigs, and 'Umar allowed them to let the *Dhimmi*s sell them on their behalf, it is also the right of Muslims in these shares that they are allowed to delegate the *Dhimmi*s to sell the shares for them.

Co-operative Societies

A Co-operative is one kind of share stock company. It is a company even if called a Co-operative. It means participation between a group of people who agree amongst themselves to associate according to their individual activities.

The Co-operative originates in the usual trading form aiming to help its members or to secure their defined economical interests. Thus the Co-operative is a corporate body regarding rights and duties, although it differs from the other Co-operatives which are not economically oriented. The Co-operative works to increase the profit of its members, not the interests of others, a matter that requires establishing a strong linkage between its economic activity and the economic activity (i.e. business) of each of its members.

A Co-operative is formed between as many as seven or more members or as few as three, but cannot be less than that. Co-operatives may be of two types: One is a company with established shares where any person in the company may be considered a partner by virtue of acquiring shares.

The second is a company with no established shares, where joining the company is achieved through paying an annual fee decided at the annual general meeting.

Five conditions must be fulfilled in the Co-operative:

Firstly: Freedom of joining the Co-operative. Subscription stays open for everybody, according to the same conditions that applied for preceding members. Where the Co-operative laws, limits and reservations are applied on the new members, whether these laws were of a local nature like those for the people of a village, or they were of professional nature like those for Barbers (Hairdressers) as an example.

Secondly: Co-operative members have equal rights, particularly the right of voting, thus every member is given one vote.

Thirdly: A specified profit is assigned for the shares. The Co-operative pays to its permanent shareholders a certain profit, provided the profits of the company allow.

Fourthly: The surplus profits of the investment are repaid, where the net profits are distributed amongst the members in proportion to the transactions they carried out with the Co-operative, such as purchases or use of the utilities and facilities of the Co-operative.

Fifthly: A Co-operative fund must be formed by crediting the reserve funds.

The authority which runs the Co-operative through its management and carries out its activity is the board of directors elected at the annual general meeting and formed from the shareholders, where every shareholder has a vote irrespective of the number of his shares. So one with one hundred shares is no different from a shareholder with one share, and each of them has one vote in electing the directors.

Co-operatives are of many kinds, like professional Co-operatives, the consumer Co-operatives, agricultural Co-operatives, and production Co-operatives. These Co-operatives, as a whole, are either consumer Co-operatives, where profits are divided according to purchases, or production Co-operatives, where the profit is divided according to the production.

This describes the Co-operatives, which are invalid and contradict the rules of Islam according to the following:

1. The Co-operative is a company, so it should fulfil the conditions of a company as stated by the *Shar'a* in order to be valid. The company in Islam is a contract between two or more persons, in which they agree to run an economic project for the purpose of achieving a profit. Therefore, there must be a body so that the activity of the company is carried out by partners. In other words, the company should include a body (partner) who has a share in the company to be legal. Thus if there did not exist a partner in the company who has shares in it and additionally runs the work which the company was established for, then no company exists. If we apply these conditions to Co-operatives we find that they are not legally valid companies, because they are built upon property (capital) only. They are not based on an agreement to carry out work; the agreement is to provide capital and establish a management that will run its activities (work). Therefore, the people who subscribed to the company only associate together via their properties (capital); thus the company does not have a body. Accordingly, the Co-operative does not represent a legal company, as it does not include a body. It is considered non-existent in the first instance as the company is a contract to manage capital, and this action requires a body. When a company has no body, it fails to be a company from the *Shar'a* point of view.

2. Furthermore, distributing profits proportional to purchases or according to production, rather than relative to the capital or relative to the work is not allowed. If the company was concluded on the basis of capital then the profit should be determined by the capital, and if it was concluded on the basis of work it should also be determined by work. So the profit follows either the capital or the work, or both of them. But to stipulate the distribution of the profit according to purchases or according to production is not allowed, because this contradicts the contract in the opinion of the *Shar'a*. And every condition that contradicts what is required by the contract or it is not for the interest of the contract, is an invalid condition (*Fasid*). Distributing the profit according to purchases or according to the production contradicts what

is required by the contract, because the contract in the view of the *Shar'a*, applies upon the property (capital) or the work, so the profit should be in proportion with the capital or the work. If it is stipulated according to purchases, or the production, it would be an invalid (*Fasid*) condition.

Insurance (Ta'meen)

Insurance whether on life, goods, property or any of its numerous types is a contract. It is a contract between the insurance company and the insuring person in which the latter asks the insurance company to give him a promise that it will compensate him for that (*'Ayn*) which is spoilt or destroyed or for its price with regard to goods or property, or a certain sum of money with regard to life and the like. This takes place if the accident occurs within a defined period, in exchange for a certain amount of money (premium); and the (Insurance) company accepts this.

Based upon this offer and acceptance, the insurance company undertakes to compensate the insuring person, within certain conditions approved by the two sides, either for the thing which he loses or its price when an accident occurs, or a sum of money which they have agreed upon e.g. in the event of his goods being destroyed, his car being damaged, his house being burnt down, his property being stolen, him dying or the like occurred during a certain period of time, he will be compensated, in exchange for a certain amount of money (premium) which the insuring person pays to the company during that defined period of time.

It appears from the above that insurance is an agreement between the insurance company and the insuring person over the type of insurance and its conditions, so it is a contract. However, according to this contract which was concluded between the two sides . i.e. the agreement . the company gives an undertaking to compensate or to pay a certain amount of money within the agreed conditions. So if an accident occurred to the insuring person upon which the terms of the contract apply, then the company becomes obliged to compensate him for the destroyed thing or its price according to the market price at the time of the accident. The company is free to pay the price or to compensate for the loss to the insuring person or to others. This compensation becomes a right due to

the insuring person, in the company's responsibility (*Dhimma*) once the matter mentioned in the contract has occurred, provided the insurance company is convinced that he deserves it or if the court gave such a verdict.

The term 'insurance' has been used in this matter. Insurance could be to the benefit of the insuring person, or to the benefit of others such as his children, wife, inheritors, or any other person or group (beneficiary) assigned by the insuring person. Calling this contract 'life insurance', or insurance on goods, the voice or any other asset is aimed to market this transaction to the people. Otherwise, the fact of the matter is that the insuring person does not insure his life. He, rather, insures that a certain sum of money will be paid to his children, wife or inheritors or to any other named beneficiary designated by him, when his death occurs. Similarly he does not insure his goods, car, property etc: rather, he insures so as to be compensated for the insured object or its price in case it is injured or damaged. So it is, in fact, a guarantee (*Dhamaan*), for him or others to obtain a certain sum of money or compensation if something occurred to him that took his life or damaged his property, and therefore it is not a guarantee for his life or his property. This is the reality of insurance. The accurate study of it shows it to be invalid (*Batil*) from two angles:

Firstly: It is a contract because it is an agreement between two parties, and it includes offer and acceptance, where the offer is from the insuring party and the acceptance is from the company. So in order that this contract be legitimately valid from the *Shar'a* (divine revelation) point of view, it must contain the *Shar'a* conditions of the contract. If it contains such conditions it becomes valid, otherwise not. From the *Shar'a* point of view, the contract should apply upon an object or a benefit. So if it did not apply upon either a thing or benefit it would be invalid, because it would not apply upon a matter that makes it a legitimate contract. This is so because the legitimate contract applies either to a thing in exchange for something else as is the case with selling, forward buying/advance sale (*Salam*), company and the like; or it applies upon a thing without an exchange like the gift; or it applies upon a benefit in exchange for compensation like leasing; or to a benefit without compensation like lending. Thus the legitimate contract must apply upon something.

The insurance is not a contract that applies upon an object or a benefit; rather it is a contract that applies upon a pledge i.e. guarantee (*Dhamana*). The pledge or the guarantee does not represent an object for it cannot be consumed nor its benefit be used; nor does it represent a benefit, because no benefit derives from that guarantee itself either by leasing or by lending. As for obtaining money based upon this guarantee, this is not considered its benefit; rather it is a result of a transaction. Therefore, the insurance contract is not considered to apply upon a thing or a benefit, and it does not include all of the conditions required by the *Shar'a* in a legitimate contract, so it is void.

Secondly: The company gives a pledge to the insuring person within certain conditions, so it is a form of guarantee (*Dhamaan*). Accordingly, the conditions required by *Shar'a* in relation to the guarantee have to be applied to the insurance contract so as to be considered a legitimate guarantee. If it contained these conditions it would be legitimate, otherwise not. Referring to the guarantee we find:

The guarantee is where the guarantor (*Dhaamin*) joins his responsibility (*Dhimma*) to the responsibility of the person guaranteed for (*Madhmoon 'Anhu*) in committing oneself to a certain right (*Haqq*). So it must include joining one's responsibility to another's responsibility; also there must be a guarantor, a person guaranteed for and a person guaranteed (*Madhmoon Lahu*). So the guarantee is the mandatory commitment (*Iltizam*) of a right as one's responsibility without compensation. A condition of the guarantee's validity is that it should be with regard to a financial right which is already due (for repayment) or which will become due. So if the pledge was not in respect of a due right or a right that will become due, the guarantee is not valid. This is so because a guarantee is the joining of one's responsibility to another's responsibility in relation to its fulfilment, so if there is no right in the responsibility of the person guaranteed for, then there is no joining of responsibilities. This is quite clear in the due right.

As for the right which will become due later, as for example when a man says to a woman: 'Marry this person and I guarantee your dowry', the guarantor has joined his responsibility to the responsibility of the person guaranteed for such that the guarantor will be bound like the guaranteed for, and that which is proved in the responsibility of the guaranteed for

is similarly proved in the guarantor's responsibility. Whereas, if there is no right due upon anyone or a right that will become due later, then there is no meaning to the guarantee as there is no joining of responsibilities; such a guarantee therefore is not valid. Therefore, if the right was not due upon the neck of the person guaranteed for or it does not become due later, the guarantee is not valid. This is because it is a condition that the person guaranteed for has a guarantor for an object if it is damaged or destroyed, or he is responsible for a debt whether the matter is actual in the case where the right was due and proved to be his responsibility or he is potentially responsible in the case where the right will become due later. So, if the person guaranteed for was not responsible, whether immediately or potentially, the guarantee is invalid because whatever is not due upon the person guaranteed for is not due upon the guarantor. So, for example, in the case of a person who receives clothes from (e.g. cleaner), and somebody told another person: 'Send your clothes to him and I will guarantee them.' If the clothes were then damaged, would the guarantor be responsible for the price of the clothes on behalf of the person who received them? The answer is as follows: If the clothes were damaged without his (i.e. the cleaner's) action or negligence, then the guarantor guarantees nothing because, in the first place, the person guaranteed for (the cleaner) bears no responsibility for the damage. Since the principal (*Aseel*) is not liable for the damage then, with greater reason, neither is the guarantor. Therefore, there should be a right due to the person guaranteed for from other people, or it will become due later, in order that the guarantee becomes valid. So establishing the right for the person guaranteed for, whether immediately or potentially, is a condition for the validity of the guarantee. However, it is not a condition that the person guaranteed for (*Madhmoon 'Anhu*) nor the guaranteed person (*Madhmoon Lahu*) be named; thus the guarantee will be valid if these were unknown (i.e. not named). So if a person said to another: 'Give your clothes to a cleaner,' and the latter said: 'I am afraid that he will damage them.' Then the former responded: 'Give your clothes to a cleaner and I guarantee them if they are damaged' without specifying the cleaner, the guarantee is valid. So if he gave them to a cleaner and they were damaged, the guarantor would be responsible even if the person guaranteed for was not named. Similarly, if he said: 'so and so is a good cleaner, and I guarantee him against any damage for any person who gives to him his clothes,' the guarantee is valid though the guaranteed person is unknown.

It is clear in the evidence of the guarantee that there is a joining of one's responsibility to another's responsibility, and it is a guarantee of a right due upon the responsibility (*Dhimma*). It is also clear that there is a guarantor, a person guaranteed for and a guaranteed person. It is also clear that it is given without compensation, and that the person guaranteed for and the guaranteed person could be unknown. The evidence for that is what Abu Dawud narrated from Jabir who said: **"The Prophet ﷺ would not pray over any person who died while indebted. A dead man was brought.** He ﷺ said**: 'Is he indebted?'** They said: **'Yes, two dinars.'** He ﷺ said: **'Pray for your companion.'** Abu Qatadah al-Ansari said: **'O Messenger of Allah, they are upon me.' The Messenger of Allah ﷺ then prayed over him.** When Allah ﷻ opened the land (i.e. conquests in Jihad) for the Messenger of Allah ﷺ, he ﷺ said: **'I am more entitled to (i.e. responsible for) every believer than his own soul. So if anyone leaves a debt it is upon me to repay, and whoever leaves wealth it is for his inheritors.'"** It is clear in this *Hadith* that Abu Qatadah had joined his responsibility to the responsibility of the dead man in committing a financial right due upon the debtor. And it is clear in the *Hadith* that the guarantee includes a guarantor, a person guaranteed for and a guaranteed person; and the guarantee which each of them (the dead person and the guarantor) guaranteed to pay was a right due upon the responsibility (of the deceased) and it was given without compensation. It is also clear that the person guaranteed for i.e. the deceased and the guaranteed person i.e. the owner of the debt were unknown at the time of the guarantee. So the *Hadith* contained the conditions for the validity of a guarantee, and the conditions for its contracting (*In'iqad*).

This is the guarantee in view of the *Shar'a*. By applying the pledge of insurance which is definitely a guarantee, upon it, we find that insurance is devoid of all the conditions which the *Shari'ah* enunciated regarding the validity and contracting of the guarantee. In insurance, there is no joining of a responsibility to a responsibility in any way. The insurance company did not join its responsibility to the responsibility of another to commit itself in paying money due to the insuring person so there is no guarantee; thus the insurance is void. In insurance, there is no financial right due to the insuring person from anyone that the insurance company committed itself to pay. This is because the insuring person has no financial right against anyone that the company guaranteed, so insurance is devoid of

the financial right. So the insurance company did not commit itself to any financial right so as to validate it as a guarantee in *Shar'a*. Moreover, what the company was committed to pay of compensation, price or money, was not a right due to the guaranteed person from other people at the time of concluding the insurance contract, whether immediately or potentially, so as to validate it as a guarantee. So the insurance company has guaranteed that which is not due either immediately or potentially, making the guarantee invalid and the insurance consequently becomes void. Furthermore, insurance does not include a person guaranteed for, because the insurance company did not guarantee for anyone a right due upon him so as to be called a guarantee; thus the insurance contract was devoid of an essential element required to exist in the view of *Shar'a*, namely the presence of the person guaranteed for. This is because it is essential that there should exist in the guarantee, a guarantor, a person guaranteed for, and a guaranteed person. Since the insurance contract did not include a person guaranteed for, it is void. Additionally, when the insurance company pledged to compensate for the object or pay its price if it was damaged, or pay money in case an accident occurred, it pledged to make this payment in return for a certain amount of money (or premium). So this is a commitment (*Iltizam*) in return for compensation which is not allowed, as one of the conditions for the valid guarantee is that it is without compensation. Thus the presence of compensation (premium for the insurance company) invalidates it.

This clarifies the extent to which the contract of insurance is devoid of the conditions of guarantee which *Shar'a* has stated, and its failure to satisfy the conditions for concluding the guarantee and the conditions for its validity. Therefore, the pledge document (*Sanad*) which the company gives, guaranteeing thereby compensation and price or guaranteeing property is void from its basis, such that insurance, in its totality, is void in the view of *Shar'a*.

Therefore, insurance in its totality is prohibited by *Shar'a*, whether it is insurance on life, goods, property or any other thing(s). The reason for its prohibition is that its contract is void in the view of *Shar'a*; and the pledge which the insurance company gives according to this contract is void according to *Shar'a*. So taking money because of this contract and this pledge is prohibited, and it is considered to be the earning of money illegitimately which is included as illicit money (*Mal as-Suht*).

14
The Prohibited Methods of Increasing Ownership

The Islamic *Shar'a* made the increase of ownership restricted with limits which are not allowed to be violated. Hence a person is prevented from increasing ownership in certain ways, included in which are:

Gambling

Shar'a prevented gambling absolutely, and it considered the property earned by this means as if not owned. Allah ﷻ said:

يا أيها الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالأَنصَابُ وَالأَزْلامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تفلحون ، إنما يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنْ الصَّلاةِ فَهَلْ أَنْتُمْ مُنتَهُونَ

"O you who believe! Verily khamr (alcohol/intoxicants) and gambling and idols and divining arrows are only an infamy of Satan's handiwork. Leave them aside in order that you may succeed. Satan seeks only to cast among you enmity and hatred by means of alcohol and games of chance, and to turn you away from remembrance of Allah and from the prayer. Will you then stop (doing that)?" [Al-Ma'idah: 90-91]

Prohibition of intoxicants and games of chance was emphasised in

this verse in many forms of which the verse was started with '*Inna*' which is an article of emphasis; and they were also linked with the worshipping of idols, and considered filth (*Rijs*).

Allah ﷻ said:

فَاجْتَنِبُوا الرِّجْسَ مِنْ الأَوْثَانِ

"Do not approach the filth (rijs) of idols." [Al-Hajj: 30]

and they were made of Satan's handiwork, and nothing comes from Satan except complete evil; and they were ordered to be avoided; and in avoiding them is the success, and if avoiding them is a success, committing them is a failure and destruction. It was also mentioned that which occurs of them of harm (evil), which is the hostilities and hatred that happen between the people, of wine and gambling, and what they lead to in turning away from remembrance of Allah ﷻ and from observing the prayer times. His ﷻ saying: *'Will you then stop (doing that)?'* is one of the most eloquent forms of banning. This form of speech is like saying: 'It has been recited upon you what wine and gambling have of distractions and prohibitions, so are you not giving (them) up, after these distractions and prohibitions?' One form of gambling is the lottery, whatever is its type and whatever reason it was made for. Another type of gambling is betting in horse races. The property earned by gambling is *Haram* and not allowed to be owned.

Interest/Usury (Riba)

Shar'a prohibited usury absolutely, regardless of its percentage, whether it was high or low. The usury gain is definitely *Haram*; nobody has the right to own it, and it has to be returned to its original owners if they were known.

Allah ﷻ said:

الَّذِينَ يَأْكُلُونَ الرِّبَا لا يَقُومُونَ إِلا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ
الشَّيْطَانُ مِنْ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ
اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانتَهَى فَلَهُ
مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُوْلَئِكَ أَصْحَابُ النَّارِ هُمْ
فِيهَا خَالِدُونَ

"Those who devour (take) interest (riba) cannot stand except as the one whom the Satan, by (his) touch, drives him to madness. That is because they say: Trade is just like riba, whereas Allah permitted trade and forbade riba. The one to whom an admonition from his Lord comes and he refrains (in obedience thereto), he shall keep (the profits of) that which is past, and his affair (henceforth) is with Allah. As for him who returns (to usury), such are rightful owners of the fire. They will abide therein eternally." [Al-Baqarah: 275]

And He ﷻ said:

يا أيها الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنْ الرِّبَا إِنْ كُنتُمْ
مؤمنينَ فإن لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنْ اللَّهِ وَرَسُولِهِ وَإِنْ
تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لا تَظْلِمُونَ وَلا تُظْلَمُونَ

"O you who believe! Observe your duty to Allah, and give up what remains of your demands for usury, if you are (in truth) believers. And if you do not, then take notice of war (against you) from Allah and His Messenger. And if you repent then you have your capital (without interest). Deal not unjustly, nor be dealt with unjustly." [Al-Baqarah: 278-279].

The true reality of usury is that the interest which the usurer takes is an exploitation of the effort of the people, and it is a recompense without spending any effort; and because the money on which usury is taken is of secured interest, not subject to any loss, is a matter which disagrees with

the general rule which states: 'Loss goes with the gain.' Therefore, investing the property by partnership, *Mudharaba* and sharecropping within their conditions is allowed as the community benefits from them and the effort of other people is not exploited, but they are rather a means which enables them to benefit from their own effort, and this investment is subject to loss as it is subject to profit, a matter which is different than usury. However, prohibiting the usury was by the text, which was not reasoned, and the *Ahadith* of the Messenger of Allah ﷺ explained the commodities in which usury (increase or decrease) is prohibited. Anyhow, it may occur to the mind that the person who possesses a property will keep it for himself, and he may not be generous enough to lend it to the needy in order to meet their needs. Such need will press on the needy person, so there should be a means to meet such need. Moreover, the needs, nowadays, have become numerous and varied, and usury became the foundation of trading, agriculture and industry. Therefore, banks were established to deal with usury, and there is no way other than them as there is no way other than usurers to meet the needs.

The answer to this is that we talk about the society in which the whole of Islam including the economic aspects, is applied, not about the society in its current situation. This is because the current society is run according to the Capitalist system; therefore, the bank emerged in it as one of life's necessities. So the owner of the property who sees himself free in his ownership, and who sees himself free to exploit by cheating, monopoly, gambling, usury and such like, without supervision from a government or restriction by a law no doubt, considers usury and the bank to be of life's necessities.

The current economic system has to be changed completely and to be replaced, radically and completely, by the Islamic system of economics. If this system was removed and the Islamic system was applied, then it will appear to the people that in the society in which Islam is applied, usury does not appear to be necessary, because the one who needs to borrow, needs that for either living or farming. In regard to the first need, Islam meets it by securing the livelihood for every citizen. As for the second need, Islam meets that by lending to the needy without usury. Ibn Hibban narrated from Ibn Mas'oud that he said that the Messenger of Allah ﷺ said: **"Any Muslim who lends (to) another Muslim twice,**

surely it would be counted as one charity.” Lending to the needy is recommended and borrowing is not disliked, it is rather recommended because the Messenger of Allah ﷺ used to borrow. And since borrowing exists, and it is recommended for the borrower and the lender, then it became apparent that usury is one of the most severe harms to economic life. It rather became obvious that it is necessary to eliminate usury and to establish thick barriers between it and the society by legislation and direction in accordance with the system of Islam.

If usury was eliminated then there would be no need for the banks, which exist today. The *Bait ul-Mal* (treasury fund) will remain the only lender of property without interest after ascertaining the possibility of benefiting from the property. 'Umar ibn al Khattab gave the farmers in Iraq properties from the *Bait ul-Mal* to (help them) use their land'. The divine law (*Hukm Shar'i*) states that the farmers are given from the *Bait ul-Mal* properties which help them to use their land, until the crops are collected. Imam Abu Yusuf said: 'The needy is given a property as a loan from the *Bait ul-Mal* which he needs in order to work in his land.' As the *Bait ul-Mal* lends to farmers for agriculture, it lends to others like the craftsmen who carry out individual work or things they may need to maintain themselves. 'Umar gave to the farmers because they were in need to meet their own livelihood; so the rich farmers would not be given anything from the *Bait ul-Mal* to increase their production. By analogy with farmers, any other people similar to them in need for meeting their own livelihood are provided for. The Messenger of Allah ﷺ gave a man a rope and an axe to cut wood for gaining his food.

However, avoiding usury is not subject to the existence of the Islamic society, or the existence of the Islamic State, or the existence of the one who lends the property, rather usury is *Haram* and it must be avoided whether there is an Islamic State or not, and whether there is an Islamic society or not, or there are those who lend property or not.

Criminal Fraud

Fraud, linguistically means deceit, so if it is said that he defrauded him in selling and buying, it means that he deceived him, and subdued him. Deceiving in the price means to sell something for more or less than it's worth. Criminal fraud is prohibited in *Shar'a* because it was confirmed in

the authentic *Hadith* that deception is forbidden decisively. Bukhari narrated from 'Abdullah ibn 'Umar **that a man mentioned to the Prophet ﷺ that he deceives in trading; the Messenger of Allah ﷺ said: “If you entered into trading say there is no deceit (khilaba).”** Ahmad ibn Hanbal narrated from Anas **“that a man at the time of the Messenger of Allah ﷺ used to trade while he was mentally weak; his relatives came to the Messenger of Allah ﷺ and said: ‘O Prophet of Allah, declare so and so person as legally incompetent (i.e. prevent him from disposition) because he trades while he is feeble minded; so the Prophet of Allah ﷺ invited him and forbade him from selling; he said: ‘O Prophet of Allah, I cannot bear not to trade.’ The Messenger of Allah ﷺ said: “If you are not going to stop trading, say: look at this look and at that, there is no deceit.”’** Al-Bazzar narrated from Anas that the Messenger of Allah ﷺ **“forbade selling animals left unmilked”** (as deception).

These *Ahadith* demanded giving up deception, which indicates that forbidding of the deception was decisive. Therefore, deception is *Haram* (prohibited). But in fact, the deception that is *Haram* is the criminal (i.e.excessive) deception (or fraud), because the reason for prohibiting fraud is that it was a deception in the price; but this would not be called a deception if it was minute, as it would then be a form of skill in negotiation. So deception is only considered fraud if it was excessive. If fraud was proven, the deceived person has the choice to abrogate the sale or to conclude it i.e. if fraud appeared in the sale then the deceived person has the choice to return the money and take the commodity if he was the seller, and to return back the commodity and take the money if he was the purchaser. But he is not allowed to take the indemnity i.e. the difference between the actual price of the commodity and the sale price. This is because the Messenger of Allah ﷺ gave him the choice either to abrogate the sale or to conclude. Ad-Daraqutni mentioned from Muhammad ibn Yahya ibn Hibban that he said that the Messenger of Allah ﷺ said: **“If you purchased say there is no deception, then in every commodity you purchased you have the choice after three nights to accept (the commodity) and thus hold it or to return it back to its owner.”** This indicates that the deceived person has the choice; but the choice is proved by two conditions: the first is the lack of knowledge of the price at the time of contract (or deal), and the second is the excessive increase or decrease with which people do not involve in

deception at the time of contract. The criminal fraud is that which the traders consider as being so. This is not assessed by one third or by one fourth of the price, but it is rather left to the estimation of the traders in the town at the time of concluding the contract; because the amount of increase and decrease differs according to the types commodities and the markets.

Deceit in Trade

The sale contract is originally binding. So once the contract by the offer and acceptance between the seller and the purchaser was completed, and the meetings of sale finished, then the sale contract becomes binding and the two sides have to execute it. But because the contract of transaction must be completed in a manner which eliminates disputes amongst the people, *Shar'a* made it prohibited for the people to deceive in trading, and it made the one who deceives sinful whether he was the seller or the purchaser, and whether deception was in the commodity or the currency; all of this is prohibited (*Haram*), since deceit could occur from the seller or from the purchaser.

The deceit of the seller regarding the commodity is by hiding the defect from the purchaser, while he knows about it; or by covering the defect from the purchaser in a way which implies to the purchaser that there is no defect, or by covering the commodity in a way which shows that it is good. Deceit by the purchaser in the price is by counterfeiting the currency or by concealing a forgery while he was aware of it. The price (of the commodity) could vary according to the sold (commodity) because of the deceit in it; and the purchaser may be encouraged to buy a commodity because of the deceit in it. Such deceit, in all its types, is *Haram* according to what Abu Hurairah narrated from the Messenger of Allah ﷺ, who said: **"Do not tie the udder of the camels and sheep, and whoever purchased it after doing that, he has the choice after he milked it either to hold it if he liked it or to return it back together with a sa'a (a cubic measure) of dates."** And also due to what Ibn Majah narrated from Abu Hurairah, who said that the Messenger of Allah ﷺ said: **"Whoever bought a camel or a sheep with a tied udder, he has the choice to return it within three days together with a sa'a of dates or wheat"** (which represents the price of

the milk he has gained). Al-Bazzar narrated from Anas from **the Messenger of Allah ﷺ that he prohibited the selling of animals that are left not milked.** So these *Ahadith* are clear in forbidding the tying of the udders of camels and sheep, and forbidding the selling of an animal after it was left unmilked till its udder became large to presume that it is a dairy cattle, because this is deceit and is prohibited (*Haram*). Similarly, any action that covers the defect or hides it is considered deception and is prohibited, whether it was in the commodity, or the currency, because it is fraud. A Muslim is not allowed to deceive in the commodity or the currency. Rather he has to show the defect in the commodity, and explain the forgery in the currency. He is not allowed to deceive in the commodity so as to circulate it or to sell it with a higher price. Nor is he allowed to deceive in the currency so that it would be accepted as a price of a commodity. This is because the prohibition of the Prophet ﷺ regarding that was decisive. Ibn Majah narrated from `Uqbah ibn `Amir from the Prophet ﷺ that he said: **"The Muslim is the brother of the Muslim, and it is not allowed for a Muslim to buy a faulty thing from his brother without him being shown that fault."** Bukhari narrated also from Hakeem ibn Hizam from the Prophet ﷺ, **that he ﷺ said: "The two traders (the seller and the purchaser) have the choice (to conclude or cancel the deal) before they departed (from each other). If they were honest and explained (the commodity and the currency), their sale will be blessed. But if they hid (the defect) and lied (to each other) the blessing of their sale will be eradicated."** The Prophet ﷺ also said: **"No one of us is allowed to deceive",** as narrated by Ibn Majah and Abu Dawud from Abu Hurairah. And whoever earned something through deceit and cheating would not (legally) possess it, because deceit is not one of the means of ownership, rather it is of the prohibited means, and thus it (the thing obtained by deception) is a prohibited and illegal (*Suht*) property. The Prophet ﷺ said: **"Any (human) flesh that grows from illegal (suht) property will not enter paradise, then the Hellfire deserves it more",** narrated by Ahmad from Jabir ibn Abdullah. If fraud occurred, whether in the commodity or the currency, then the cheated person has the choice either to dissolve the contract or to carry it out, without more options. So if the purchaser wished to keep the defective commodity and take the indemnity i.e. the difference in the prices of the not defected and defected commodities, he has no right to do so, because the Prophet ﷺ did not allow the taking of the indemnity; rather he gave

the choice between two matters: **"If he wished he could keep (the commodity) or return it back",** as narrated by Bukhari from Abu Hurairah.

It is not a condition that the salesman knew about the fraud or the defect (in the commodity) for the choice to be made. Rather, the choice is given to the cheated person once the fraud was proved, whether the salesman knew about it or not. This is because the *Ahadith* are general (in their sense) and because the reality of the sale is that it happened with that which was forbidden. This is in contrast with deceit (*Ghubn*), which is proven once it is known. This is because if he was not aware (of the deceit) then he would not really be deceiver unless the right of the deceived is proven. For example, when the market price decreases while the salesman is unaware of that when he sells (a commodity) but then realises that he has sold it for a price which is more than it is worth. This example is not considered deceit, and the purchaser is not given the choice, because the salesman is not considered as a deceiver when he was not aware of the fall in price.

Monopoly

Monopoly is prevented absolutely, and it is forbidden in *Shar'a* due to the decisive prohibition of it that came explicitly in the *Hadith*. S'aid ibn Al-Musayyab narrated from Mu'ammar ibn Abdullah Al-'Adawi in Bukhari that the Prophet ﷺ said: **"No one monopolises except the wrongdoer."** Al-Athram narrated from Abu Umamah, **he said: "The Messenger of Allah ﷺ forbade that a foodstuff be monopolised".** And Muslim narrated through his chain of narrators from S'aid ibn Al-Musayyab that Mu'ammar said: "The Messenger of Allah ﷺ said: **"Whoever monopolised is a wrongdoer.""** The prohibition in the *Hadith* indicates the refrain and the dispraising of the monopoliser by describing him as a wrongdoer, however the wrongdoer means the disobedient. This is a concatenation which indicates that this prohibition is decisive. Thereupon, the *Ahadith* indicated that monopoly is *Haram*. The monopoliser is the one who hoards the commodities until the price rises so as to sell them expensively such that it becomes difficult for the citizens to buy them. As for the meaning of the monopoliser (*Muhtakir*) as being the one who hoards commodities waiting for their price to rise,

this is because the word monopolised (*Ihtakara*) linguistically means to gather something and hold it waiting until it becomes expensive and then sell it for a high price. It also means *Istabadda* i.e. to hold back (hoarded) the goods so that they are sold expensively. As for the condition of monopoly that it should reach a limit at which it becomes difficult for the citizens to buy the monopolised commodity, this is because the reality of the monopoly is not conceived to happen except in such a situation. If it did not become difficult for the people to buy the commodity then it would not have been gathered nor held back to be sold expensively. Therefore, the condition of the monopoly is not only to purchase the commodity; rather it is gathering it and waiting for its price to rise so as to sell it expensively, which is considered monopoly. This applies whether the monopoliser compiled it through purchase, or from the harvest of his large land because he is the only person to plant such type of harvest or for such type, because of it being rarely planted or he compiled it from his factories, as the sole manufacturer, or because of the shortage in this type of industry as is the case with the capitalist monopolies, who monopolise manufacturing a certain thing by eliminating other factories and thereby monopolise the market. All these forms are called monopoly because they fit exactly to the linguistic meaning of the word monopolised (*Ihtakara*), which again means holding the commodity from sale and waiting for its price to rise so as to sell it expensively.

Monopoly is prohibited (*Haram*) in all things without a difference between the human foodstuff or animals foodstuff, a foodstuff or not a foodstuff, and of the people's necessities or luxuries. This is because the linguistic meaning of the word monopolised (*Ihtakara*) is to compile a thing in its absolute sense (without specification). The word monopolised did not come in the meaning of compiling the foodstuff or the people's necessities, rather compiling the thing, so it should not be confined to other than its linguistic meaning. And also because the explicit meaning of the *Ahadith* that came in the subject of monopoly indicate the prohibition of monopoly in everything. This is clear because the *Ahadith* came absolute without qualification, general without specification; so they have to stay absolute and general.

With regard to what came in some of the *Ahadith* narrations concerning limiting the monopoly to foodstuffs only, like the *Hadith*: **"The Messenger of Allah prohibited monopolising the foodstuffs"**,

and other narrations. In this regard, mentioning of foodstuffs in the *Hadith* does not make monopoly confined only to foodstuffs. As well, it is not true to say in this matter that prohibition came as unqualified (*Mutlaq*) in some narrations, and came as qualified (*Muqayyad*) to foodstuffs in others. So the unqualification (*Mutlaq*) should be explained according to the qualified (*Muqayyad*). This is not true because the word foodstuff (*Ta'am*) mentioned in some narrations is not fit for qualifying the unqualified (*Mutlaq*) narrations, it is rather a specific mentioning of one of the individual things which the unlimited (*Mutlaq*) indicates. This is because excluding other than the foodstuffs from the divine rule of prohibiting monopoly is based on using the meaning of the title (*Mafhum al-Laqab*), a matter which is not applied (i.e is invalid); accordingly, the meaning of the title is not fit for qualification nor for specification. Thus, mentioning the foodstuffs in some narrations of the *Ahadith* of monopoly is only nominating one of the types of monopoly as an example, not as qualifying monopoly in foodstuffs nor as a description which has a meaning that has to be used; it is rather a rigid (*Jamid*) name for a specified thing, that is to say it is a title not a description, so its meaning is not used. That which fits to qualify or specify the rule is that which has a meaning (*Mafhum*) that can be used, a matter which does not apply in this case. This indicates that the narrations which forbid monopoly, even those which mentioned the foodstuffs, are unqualified (*Mutlaq*) and general (*A'am*), thus they include the prohibition of the monopoly in everything absolutely.

The reality of the monopoliser is that he monopolises the market; and imposes upon people whatever price he likes by holding the commodity as a monopoly, so people will be forced to buy it from him at a high price, for it is not available other than to him. Thus the monopoliser in fact wants to increase the price for the Muslims, a matter which is *Haram*, due to what was narrated from Ma'akal ibn Yasar, that he said that the Messenger of Allah ﷺ said: **"Whosoever was involved in any of the prices of the Muslims, so as to increase it for them it would be due on Allah to place him in a great fire at the Day of Judgement."**

Price-Fixing (Tas'eer)

Allah ﷻ has left to everybody the right to sell his commodity at the

price he likes. Ibn Majah has narrated from Abu S'aid, that he said, **the Messenger of Allah ﷺ said: "Selling (trading) is by consent."** But because it is possible that the State (government) may force pricing over the people, Allah ﷻ prohibited it to set certain prices for commodities and then force people to trade (selling and buying) according to them; therefore, price-fixing was prohibited.

Price-fixing is where the ruler or his deputies or anyone who holds any authority upon the Muslims orders the traders (merchants) not to sell commodities except with a specified price. Thus they are prevented from increasing the prices so they do not raise them up, nor are they allowed to trade with less than these prices so that they do not compete with others. That is to say, they are prevented from increasing or decreasing the stated price for the peoples' interest (*Maslaha*). This means that the State intervenes in the prices and puts certain prices for the commodities or for some of them, and prevents anybody from selling with higher or lower than the fixed price, as it considers this to be for the public interest. Islam prohibited pricing absolutely, due to what Imam Ahmad narrated from Anas **who said: "Prices increased at the time of the Messenger of Allah ﷺ, so they said, O Messenger of Allah, we wish would you price (fix the prices). He ﷺ said: "Indeed Allah is the Creator, the holder *(Qabidh)*, the Open-handed *(Basit)*, the Provider *(Raziq)*, the Pricer (who fixes prices); and I wish I will meet Allah and nobody demands (complains) of me for unjust act I did against him, neither in blood or property."**

Also Abu Dawud narrated from Abu Huraira, he said, **"A man came and said, O Messenger of Allah, fix prices. He ﷺ said: "Rather Allah reduces and increases."** These *Ahadith* indicate that pricing is prohibited and is an unjust act against which a complaint is made to the ruler to remove it. And if the ruler himself did pricing he would be sinful in the sight of Allah ﷻ, because it is a prohibited (*Haram*) act. Every person of the citizens would have the right to complain to the Court of the Unjust Acts (*Mahkamat Al-Madhalim*) against the ruler who makes pricing, whether he was a governor (*Wali*) or *Khalifah*. He complains to this court about this act in order to judge against him and remove this unjust act (*Madhlama*).

Prohibiting pricing is general for all commodities, so there is no

difference between the foodstuffs and others. This is the case because the *Ahadith* forbid pricing absolutely, so they are general (*A'am*) *Ahadith* and there is nothing that qualifies them with the foodstuffs or others; so prohibition of pricing is general, which thus includes the pricing of anything.

The reality of pricing is that it is a grave *Haram* upon the nation under all circumstances, whether in the situation of war or peace, or as it opens a hidden market in which people trade unseen by the government and away from its supervision; a market which is called the black market. Therefore, the prices increase such that the rich people would possess commodities to the exclusion of the poor. Moreover, pricing would have an affect on consumption, thereby affecting the production, and may lead to an economic crisis. Furthermore, people have control over their property, because ownership of property means that they have control over it whereas, pricing means forcing interdiction (*Hajr*) over them, a matter which is not allowed except through a divine text which does not exist in this case. So it is not allowed to force interdiction (*Hajr*) over people by putting specific prices for their commodities and preventing them from trading with higher or lower than that.

In regard to the prices that rise at the time of war, or during a political crisis, this results from either the non-availability of the commodities in the market because of their being hoarded as monopoly or because of their shortage. If their absence was due to monopoly, monopoly was prohibited by Allah ﷻ, and if it was due to their shortage in the market, then the *Khalifah*, who is ordered to look after the affairs of the nation, must strive to make them available in the market by bringing them from other places, and thus he would prevent the prices from rising.

In the famine year, which was called *Ramadha* (ashes) year, when famine occurred only in Hijaz due to food shortage in that year and thus food prices increased, 'Umar ibn Al-Khattab did not fix the prices of the foodstuffs. Rather he ordered supplies of foodstuffs from Egypt and ash-Sham to be sent to the Hijaz; thus prices dropped without the need for pricing.

15

Right of Disposal to Spend in Gifts and Maintenance

One of the rights of disposal is spending. Spending a property means granting it without return, while granting a property for something in return is not called spending (*Infaq*). Allah ﷻ says:

وَأَنفِقُوا فِي سَبِيلِ اللَّهِ

"Spend in the way of Allah" [Al-Baqarah: 195]

He ﷻ said:

وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ

"And of that which We provided to them, they spend" [Al-Baqarah: 3]

He ﷻ also said:

لِيُنفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ

"Let the one who is able to spend, spend the best he can" [At-Talaq: 7]

Islam follows its own way, so it defined the ways of spending (*Infaq*) and put checks for these ways. It did not leave the property owner free in

his disposal, in a way that he can spend his property as he likes. It rather determined the way of disposal of his property both during his life and after his death.

The individual's disposal of his property through transmitting his ownership to another person without return, could be through giving it to people or through spending it upon himself and upon those he is responsible to support them financially. Spending could be done during his life, like granting, gifting, charity, financial support and *Nafaqah*. It could also be after his death, like the will. Islam intervened in this spending, in such a way that it prevented the Muslims from granting or a gift given to the enemy, in case of war, in anything that strengthens them against Muslims. It even prevented Muslims from giving charity to the enemy in that case. Islam also prevented the Muslim from giving grants, donations or gifts unless he keeps for himself and for his family that which keeps them satisfied and free from dependency upon others. If he did otherwise, then his gift and grant would be cancelled. The Messenger of Allah ﷺ said: **"The best charity (is) that which leaves you not needy, and you start by giving charity to those whom you (financially) support",** narrated by Bukhari from Abu Hurairah. Ad-Darimi narrated from Jabir ibn Abdullah that he said: **"While we were with the Messenger of Allah a man came to him, holding an egg-like piece of gold, which he gained in one of the battles. Ahmad said, it was in one of the mines, which is true. The man said, 'O Messenger of Allah, take it from me as charity. By Allah I have no property other than it.' The Prophet turned his face away from him. Then the man came from the left of the Prophet, and said as before, then he came from the front of him and repeated it again. The Prophet then said angrily, 'Let me have it', and he threw it at him in such a way that if it had touched him it would have hurted or wounded him, and said '(Why) does one of you (people) deliberately give away his property as charity, when he has nothing other than it, and then he sits to beg from people? Indeed charity is out of sufficiency. Take yours, for we have no need for it.' The man took his property.'"**

The sufficiency which the person leaves for himself and his family is that which meets their basic needs; that is the foodstuff, dress, home including the luxuries which are considered necessary for him according

to his usual standard of living. That is the amount of property which satisfies him according to the usual standard known amongst people of his like. This is assessed according to his usual needs, maintaining the standard of living at which he, his family and similar people live. In regard with what Allah ﷻ says:

وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ

...but prefer (the Emigrants) over themselves, though poverty was their lot."
[Al-Hashr: 9]

This does not mean that even if they were in poverty as it might be thought. It rather means, even if they had a need for more than their basic needs. The evidence for that is that the Prophet ﷺ gave charity for those who were in poverty, and he did not exclude from giving charity except those who had no need for property. The word *Khasasa* in the verse, linguistically relates to the *Khasas* of the house which are the gaps or openings in it. So the entire verse is:

وَلا يَجِدُونَ فِي صُدُورِهِمْ حَاجَةً مِمَّا أُوتُوا وَيُؤْثِرُونَ عَلَى
أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ

"… and entertain no desire in their hearts for things given to the (emigrants), but give them preference over themselves, even though poverty was their own lot …"
[Al-Hashr: 9].

What is meant by the prohibition of giving charity in the sayings of the Prophet ﷺ: **"Charity is out of sufficiency"**, and **"(Why) does one of you (people) deliberately give away his property as charity, when he has nothing other than it, and then he sits to beg from people",** both from a *Hadith* narrated by Ad-Darimi, is that the poor person who does not fulfil his basic needs is not allowed to give in charity things necessary for meeting his basic needs. Because charity must be out of sufficiency i.e. that which keeps him in no need to people for satisfying his basic needs. But as for the person who has property in excess of his basic needs, and after satisfying his basic needs he sees that he is in need

to satisfy more than his basic needs, like luxuries, it is preferable for such a person to prefer the poor people over himself, by giving that excess of property as charity to the poor though he needs such property to satisfy his luxuries.

Islam also prevented the person from granting, gifting or giving as a will when he is dying. In the case where he gives a grant, gift or will when he was dying, then only one third of what he gave is actually executed. Ad-Daraqutni narrated from Abu Ad-Dardaa that he said: The Prophet of Allah ﷺ said: **"Allah allowed you one third of your property (to distribute) at the time of dying to increase in your good things** *(Hasanat)*, **so as to make it an increment in your (good) deeds."** Imran ibn Hussain narrated **"that a man from the Ansar set free his six slaves when he was dying, while he had no property other than them. The Prophet ﷺ called them, divided them into three equal parts and drew lot on them thus setting free two of them and keping four as slaves."** So if setting slaves free, a matter which *Shar'a* encouraged, was not executed, then other actions are even more so similarly considered.

All this is in regard to the disposal of the property by giving it to people. But as for the disposal of property through spending it upon oneself and upon those he is responsible to spend on, Islam addressed this matter and outlined a proper way for it. Accordingly, it prohibited the person from certain things, as follows:

A. It prohibited the person from being prodigal (excessive) in spending, and it considered that as foolishness (*Safah*) which requires preventing the foolish person and squanderer from disposal of his property by restricting him (i.e. making *Hajr* on him) and appointing a guardian over him to dispose of his properties in his interest. Allah ﷻ said:

وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ

"Give not to the foolish your wealth, which Allah has assigned to you to manage; but feed and clothe them from it." [An-Nisa: 5]

So Allah ﷻ prohibited the right of disposal of property to the foolish and He gave him only the right to be fed and clothed from it. Allah ﷻ also said:

فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ

"But if he who owes the debt was foolish or weak or unable himself to dictate, then let the guardian of his interests dictate in (terms of) equity." [Al-Baqarah: 282]

So Allah ﷻ made guardianship upon the foolish a duty (*Wajib*). Al Mughira ibn Shu'aba narrated that the Messenger of Allah ﷺ **"prohibited wasting the property"**, a part of a *Hadith* narrated by Ad-Darimi, Bukhari and Muslim.

Prodigality (*Israf*) and squandering (*Tabdheer*) are two words that have linguistic and divine (*Shar'i*) meanings. The linguistic meaning prevailed amongst the people, and became detached from the divine meaning. So they started to interpret these two words in a manner other than that intended by *Shar'a*. As for their linguistic meaning, prodigality means exceeding the limit of moderation which is the opposite of the middle course. As for squandering, it means wasting and eliminating the property. With regards to the divine (*Shari'*) meaning of the two words, prodigality and squandering mean spending money (property) on anything prohibited by Allah ﷻ. So anything spent the way Allah ﷻ allowed or commended would not be considered prodigality or squandering, whether it was little or great. While anything spent the way Allah ﷻ forbids would be prodigality and squandering, whether it is little or great. It was narrated that Az-Zuhri used to say in explaining the words of Allah ﷻ:

وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ

"And let not your hand be chained to your neck, nor open it with a complete opening" [Al-Isra: 29]

he said: "Don't stop spending it upon something right (*Haqq*), nor spend it on a false (*Batil*) thing." The word prodigality was mentioned in

the Qur'an in several verses:

وَالَّذِينَ إِذَا أَنفَقُوا لَمْ يُسْرِفُوا وَلَمْ يَقْتُرُوا وَكَانَ بَيْنَ ذَلِكَ قَوَامًا

"And those who when they spend are neither prodigal nor niggardly, and there is ever a firm station between the two" [Al-Furqan: 67]

So prodigality here means to spend on sin, while spending on the things which bring one close to Allah ﷻ has no prodigality. So the meaning of the verse is: Do not spend your property on the sins, and do not be niggardly even in spending it on the allowed things, rather it is better for you to spend it on more than the allowed things (*Mubahat*), that is in charity. So spending property on the forbidden things is dispraised and stinginess in the allowed things is dispraised as well. What is praised is to spend on the allowed things and the charities. Allah ﷻ said:

وَلا تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ

"Don't be prodigal (when you spend), surely He (Allah) does not like those who are prodigal." [Al-An'am: 141]

This is censure by Allah ﷻ of prodigality, which is spending on sins. The word prodigals (*Musrifeen*) came to mean those who are turning away from remembrance (*Dhikr*) of Allah ﷻ. He ﷻ said:

فَلَمَّا كَشَفْنَا عَنْهُ ضُرَّهُ مَرَّ كَأَنْ لَمْ يَدْعُنَا إِلَى ضُرٍّ مَسَّهُ كَذَلِكَ
زُيِّنَ لِلْمُسْرِفِينَ مَا كَانُوا يَعْمَلُونَ

"But when We had relieved him of his misfortune he went his way as though he had not cried to Us for the misfortune that afflicted him. Thus do the deeds of the (transgressors) prodigals seem fair in their eyes." [Yunus: 12]

This means that Satan presents favourably, through his insinuation, what the prodigals do by way of turning away from Allah's remembrance and following their whims. So Allah ﷻ described those who turn away from the remembrance of Allah as prodigals.

The word 'prodigals' came also to mean those whose wickedness exceeded their goodness. Allah ﷻ said:

لا جَرَمَ أَنَّمَا تَدْعُونَنِي إِلَيْهِ لَيْسَ لَهُ دَعْوَةٌ فِي الدُّنْيَا وَلا فِي
الآخِرَةِ وَأَنَّ مَرَدَّنَا إِلَى اللَّهِ وَأَنَّ الْمُسْرِفِينَ هُمْ أَصْحَابُ النَّارِ

"Assuredly, that to whom you call me has no claim in the world or in the Hereafter, and our return will be to Allah, and the prodigals will be the people of the fire." [Ghafir: 43]

It was narrated from Qatadah that he said the meaning of prodigals here is the *Mushrikeen* (i.e. those who associate partners with Allah). Mujahid said that the prodigals here means those who unjustly shed blood. It was said also that it means those whose wickedness exceeded their goodness.

The word prodigals came also to mean the corrupters (*Mufsideen*). Allah ﷻ said:

فَاتَّقُوا اللَّهَ وأطيعوني ولا تُطِيعُوا أَمْرَ المسرفينَ الذينَ
يُفْسِدُونَ فِي الأَرْضِ وَلا يُصْلِحُونَ

"Therefore keep your duty to Allah and obey Me. And obey not the command of the prodigals. Who spread corruption in the earth and do not reform." [Ash-Shu'ara: 151-152]

So in all these verses, the word prodigals (*Musrifeen*) absolutely does not carry its linguistic meaning; it rather has divine (*Shar'i*) meanings. And when it is mentioned in connection with spending it is meant to be the spending of property sinfully (in disobedience). So to explain it with its linguistic meaning is invalid, because Allah ﷻ intended for it a particular divine meaning.

Squandering (*Tabdheer*) has a divine meaning which also means spending on the *Haram* things.

Allah ﷻ said:

وَلا تُبَذِّرْ تبذيرًا إن الْمُبَذِّرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ

"And squander not (your wealth) in wantonness. Lo! The squanderers were ever brothers of the devils." [Al-Isra: 26-27]

This means that the squanderers are like the devils in their wickedness, which is the greatest rebuke, because there is none more 'devilish' than Satan, and squandering means here to spend the property on forbidden matters. It was narrated from Abdullah ibn Mas'oud that he said: "Squandering means to spend the property on other than its right." Mujahid said also: "If a *Mudd* (a dry measure =18 litres) was spent unrightfully it would be squandering". It was narrated that Ibn Abbas said that the squanderer is the one who spends unrightfully. Qatadah said: "Squandering is spending sinfully (in disobedience of Allah), not on the right thing and in the corruption (*Fasad*)." These meanings have been mentioned by at-Tabari in his tafseer. All this indicates that what is meant by prodigality and squandering is the spending on what is prohibited by Allah ﷻ. So spending on anything prohibited by *Shar'a* is considered illegal (unrightful) which requires declaring the doer as incompetent. And regarding the one who is declared incompetent; his charity, selling, gift and his marriage are all not executed. Any loan he took would not be duly repaid nor would he be convicted for not repaying it. But the actions he did before the declaration of his incompetence are implemented until a judge declares his incompetence.

In regard with what Allah ﷻ says:

وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ
فَتَقْعُدَ مَلُومًا مَحْسُورًا

"And let not your hand be chained to your neck nor open it with a complete opening lest you sit down rebuked, derided." [Al-Isra: 29]

The prohibition here is the complete opening not the opening. So Allah ﷻ did not forbid a high level of spending on the *Halal* things i.e. opening the hand. What is forbidden is the complete opening of the hand, which is spending on the *Haram*. Not forbidding the opening of the hand, i.e. a high level of spending (because this is what is meant by hand opening) is an evidence that it means spending on the *Halal*. Focusing the prohibition on the total opening of the hand is an evidence that the forbiddance is focused on that which exceeds the allowed hand opening, thus the prohibition is focused on spending on the *Haram*.

This is in regard to the evidence. With regard to the reality of spending, and the evaluation that a person overspent or not, this depends on the standard of living in his country. In those countries where the individuals do not satisfy their basic needs completely, one's spending on the luxuries would be considered a high level of spending, as it is the case in many Islamic countries. But there are countries in which the individual satisfies his basic needs completely, and also satisfies his luxuries, which with the advancement in urbanisation have become, basic needs for him like the fridge, washing machine, car and the like. So his spending on these luxuries would not be considered a high level of spending. Therefore, using prodigality and squandering in their linguistic meaning would mean that the divine rule considers any spending in excess of the basic needs as *Haram*. Thus buying a fridge, a washing machine or a car is *Haram* since it is in excess to the basic needs. Or the divine rule would consider spending on these luxuries as *Haram* in some countries or on some people and *Halal* in some countries or on some people. This would mean that the divine rule changes in the same case without a reason (*Illah*), which is not allowed, as the divine rule of the same issue should never change. Moreover, when Allah ﷻ allowed using and consuming things, He defined this in absolute terms without restricting the spending to being little or great. So how then can a high level of spending be considered *Haram*? Had Allah ﷻ prohibited high levels of spending in the *Halal* things, and had He made these things *Halal*, this would mean that He had allowed and prohibited the same thing at the same time.

This would mean that Allah ﷻ had allowed using a private plane, but He prohibited using it if its purchase by a person was considered a high level of spending. This would be a contradiction which is not allowed. Therefore, the explanation of prodigality and squandering by their

linguistic meaning is not allowed, they should rather be explained by their divine (*Shar'i*) meaning which came in the verses through the interpretation of some of the Companions and trusted scholars.

B. Islam prohibited the individual from luxury, considered it a sin, and He warned the luxurious ones with torture.

Allah ﷻ said:

وَأَصْحَابُ الشِّمَالِ مَا أَصْحَابُ الشمالِ في سَمُومٍ وحميمٍ وظلٍّ
مِنْ يَحْمُومٍ لا بَارِدٍ وَلا كريمٍ إنهم كَانُوا قَبْلَ ذَلِكَ مُتْرَفِينَ

"And those of the left hand: What of those of the left hand? In scorching wind and scalding water, and shadow of black smoke. Neither cool nor refreshing. For they were, before that, indulged in sinful luxury." [Al-Waqi'a: 41-45]

i.e. they were arrogant, who do what they wish.

Allah ﷻ also said:

حَتَّى إِذَا أَخَذْنَا مُتْرَفِيهِمْ بِالْعَذَابِ إِذَا هُمْ يَجْأَرُونَ

"Till when We grasp the (town's) luxurious ones with punishment, behold! They started to supplicate." [Al-Mu'minun: 64]

The luxurious ones here means the arrogant tyrants.

Allah ﷻ said also:

وَمَا أَرْسَلْنَا فِي قَرْيَةٍ مِنْ نَذِيرٍ إلا قَالَ مُتْرَفُوهَا إِنَّا بِمَا أُرْسِلْتُمْ
بِهِ كَافِرُونَ

"And We sent not unto any township a warner, but its luxurious ones declared: Lo! We are disbelievers in that which you bring to us." [Saba'a:34]

The luxurious ones are those who are haughty (arrogant) towards the believers because of their high level of wealth and children.

Allah ﷻ said:

وَاتَّبَعَ الَّذِينَ ظَلَمُوا مَا أُتْرِفُوا فيهِ

"The wrongdoers followed that by which they were made surrounded with luxury." [Hud: 116]

What is meant by those who were surrounded with luxury is that they turned towards their whims i.e. followed their whims.

Allah ﷻ said:

وَإِذَا أَرَدْنَا أَنْ نُهْلِكَ قَرْيَةً أَمَرْنَا مُتْرَفِيهَا فَفَسَقُوا فِيهَا

"And when We would destroy a township We send commandment to its tyrant folk (luxurious ones) and afterward, they commit abomination therein." [Al-Isra: 16]

What is meant by tyrant folk is their tyrants who live at ease.

Allah ﷻ said:

وَأَتْرَفْنَاهُمْ فِي الْحَيَاةِ الدُّنْيَا

"We made them luxurious in the worldly life" [Al-Mu'minun: 33]

that is We made them insist on their tyranny out of their arrogance i.e. We made them arrogant.

Luxury (*Taraf*) linguistically means vanity and arrogance due to living a life of ease and comfort. When we say wealth made somebody luxurious, we mean it made him arrogant and corrupted him. That the person became luxurious means that he insisted on tyranny. He also transgressed and became haughty. Thereupon the luxury (*Taraf*) which the Qur'an condemned, and Allah ﷻ prohibited and considered a sin is the Taraf that linguistically means haughtiness and arrogance due to ease of living, but not the ease of living itself. Therefore it is wrong to interpret *Taraf* as enjoying the wealth and ease of living by that which Allah ﷻ provided, because ease of living and enjoying the provision of Allah are not condemned by *Shari'ah*.

Allah ﷻ said:

قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنْ
الرِّزْقِ

"Say: Who has forbidden the adornment of Allah which He has brought for His servants and the good things of His provision?" [Al-A'raf: 32]

At-Tirmidhi narrated from Abdullah ibn Amr who said: **'The Prophet said, "Allah likes to see the signs of His favour (bounties) on His servant,"'** i.e. He loves for His servants to enjoy His favour and enjoy the good things He has provided for him. But Allah ﷻ hates the haughtiness, arrogance and transgression that may result from a life of ease. So Allah ﷻ hates the life of ease if it produced haughtiness, transgression, arrogance and tyranny. Since a life of ease and comfort by the abundant wealth could lead some people to arrogance, tyranny and haughtiness; that is it creates *Taraf* in them, Islam prohibited that type of luxury. So Islam prevented corruption if it resulted from the abundance of wealth and children, making people arrogant and tyrannical. Islam prohibited that strongly. So when it is said that *Taraf* is *Haram* it does not mean the life of ease is *Haram*, it rather means that arrogance which results from the easy use of wealth is *Haram*, as *Taraf* would mean linguistically, and as luxury (*Taraf*) would mean from the verses of the Qur'an.

C. Islam prohibited the individual from being niggardly towards himself and preventing himself from legal enjoyment. It also made *Halal* the enjoyment of the good provision and the use of suitable ornaments. Allah ﷻ said:

وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ
فَتَقْعُدَ مَلُومًا مَحْسُورًا

"And let not your hand be chained to your neck, nor open it with complete opening lest you sit down rebuked, derided." [Al-Isra: 29]

And Allah ﷻ said:

وَالَّذِينَ إِذَا أَنفَقُوا لَمْ يُسْرِفُوا وَلَمْ يَقْتُرُوا وَكَانَ بَيْنَ ذَلِكَ قَوَامًا

"And those who, when they spend, are neither prodigal nor miserly, and there is ever a firm station between the two (situations)." [Al-Furqan: 67]

And Allah ﷻ also said:

قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنْ
الرِّزْقِ

"Say: Who has forbidden the adornment of Allah which He has brought for His servants and the good things of His provision." [Al-A'raf: 32]

The Prophet ﷺ said: **"Allah loves to see the sign of His favour on His servant"**, narrated by At-Tirmidhi.

The Prophet ﷺ said also: "**If Allah gave you property, let Him see the sign of His bounties and dignity on you",** narrated by Al-Hakim from the father of Abu Al-Ahwas. So if someone has property and was miserly when spending on himself, he would be sinful in the sight of Allah. But if he was miserly towards those he is responsible to support, then beside his sin in the sight of Allah, he must be obliged by the State to spend on his relatives whom he is responsible to spend on, and to make sure that his spending on them is ample so that they are provided with a good standard of living. Allah ﷻ said:

لِيُنفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ

"Let the wealthy (person) spend out of his capacity." [At-Talaq: 7]

And Allah ﷻ said:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنتُمْ مِنْ وُجْدِكُمْ وَلا تُضَارُّوهُنَّ
لِتُضَيِّقُوا عَلَيْهِنَّ

"Lodge them where you dwell, according to your wealth, and harass them not so as to make life harsh for them." [At-Talaq: 6]

If the person was miserly towards those whom he was responsible to support, then those who are entitled for financial support (*Nafaqah*) have the right to take from his property the amount which normally meets their needs. Bukhari and Ahmad both narrated **from Aisha that Hind bint Utbah said: "O Messenger of Allah, Abu Sufyan is a miserly person, and he does not give me that which is enough for me and my children except that which I take without his knowledge." The Prophet ﷺ said: 'Take that which is normally enough for you and your children.'"** So the Prophet ﷺ made it a right for her to take that *Nafaqah* by herself without his knowledge if he did not give it to her, because *Nafaqah* is a duty upon him. And the judge is bound to assign to her this *Nafaqah*. As it is obligatory that the person who is responsible to pay the *Nafaqah*, it is likewise obligatory upon the one who takes the nafaqah to spend it on the matters for which it was paid. So if the *Nafaqah* was decided to the children, and it was paid to their guardian, whether a mother, grandmother or others, then she has to spend it on them; and if she did not do that then the judge would oblige her to spend it for that purpose.

Poverty (Al-Faqr)

Poverty linguistically means need. So the verb *Faqara* (he became poor) is the opposite of *Istaghna* (not in need of). The verb *Iftaqara* means needed. The singular noun is *Faqir* (poor) and the plural is *Fuqara'a* (poor people). *Afqarahu* (made him poor) is the opposite of *Aghnahu* (made him wealthy). *Al-faqr* (poverty) is opposite to *Al-Ghina* (richness), which means that the person became needy i.e. he does not have that with which he satisfies himself. *Faqir* in *Shar'a* is the needy one, who is in a weak situation and who does not beg.

It was narrated by Mujahid who said: "The poor is the one who does not beg." Ikrimah said: "The poor is the weak."

Allah ﷻ the Supreme said:

رَبِّ إِنِّي لِمَا أَنزَلْتَ إِلَيَّ مِنْ خَيْرٍ فَقِيرٌ

"My Lord I am (in need) for whatever good You send down to me" [Al-Qasas: 24]

i.e., I am *Faqir* (needy) for anything good, whether little or great that you send to me.

Allah ﷻ said:

وَأَطْعِمُوا الْبَائِسَ الْفَقِيرَ

"And feed therewith the unfortunate (al ba'is), the poor." [Al-Hajj: 28]

The unfortunate (*Al-Ba'is*) is the one who is afflicted with *Bu's* (hardship), and the *Faqir* (the poor) is the one who is weakened because of need. The verses and the narrations from the linguists indicate that *Faqr* (poverty) means need. It is necessary to explain in detail what is meant by 'need'.

In the Capitalist economic system poverty is considered to be a relative matter, and not a name for a specific thing which is constant and does not change. So it is said that poverty is the inability to satisfy the needs with the required commodities and services. And since the needs increase and renew as urbanisation progresses, the satisfaction of the needs accordingly differs between people and nations. In declined nations, the needs of the citizens are limited, so they can be satisfied with the minimum necessary commodities and services. But in the materially progressed, highly urbanised and civilised nations, their needs are many, and thus their satisfaction requires more commodities and services; so the poverty there, is considered differently from that in the declined countries. For example, the non-satisfaction of the luxuries in Europe and America is considered as poverty, while the non-satisfaction of the luxuries in Egypt and Iraq, once the basic needs have been satisfied, is not considered as poverty. This view in the capitalist economic system is wrong, because it views the issue in relative terms rather than real terms. This concept is wrong because the matter at hand has a true reality, so it has to be identified by its reality. It is also wrong because the legislation revealed to man does not make the system differ according to individuals as it came for man as a human being and not as an individual. Accordingly, if the State governs citizens in Spain and others in Yemen, it is inappropriate that its view towards poverty in one country differs from its view in another country, because the individuals in each country

are human beings for whose problems solutions were laid down.

Islam considers poverty as one matter for a man in any country and any generation. Poverty in the view of Islam, is the non-satisfaction of the basic needs in a complete way. *Shar'a* has defined these basic needs in three things, which are food, clothing and accommodation.
Allah ﷻ said:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

"The duty of feeding and clothing nursing of mothers in a seemly manner is upon the father of the child." [Al-Baqarah: 233]
And Allah ﷻ said:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنتُمْ مِنْ وُجْدِكُمْ

"Lodge them where you dwell, according to your wealth." [At-Talaq: 6]

Ibn Majah narrated from Abu Al-Ahwass that he said, The Messenger of Allah said: **"Beware! Their right upon you is to provide them their clothes and food seemly."** This indicates that the basic needs, whose non-satisfaction is considered as poverty, are food, clothing and accommodation. With regards to the other additional needs, these are considered as luxuries. Thus, one is not considered poor if after satisfying his basic needs, he did not satisfy the luxuries. Poverty as defined in Islam, which is the failure to satisfy the basic needs, is considered one of the matters that caused the decline and destruction of the *Ummah*. Islam made poverty one of Satan's promises.
Allah ﷻ said:

الشَّيْطَانُ يَعِدُكُمُ الْفَقْرَ

"The devil promises you destitution (poverty)." [Al-Baqarah: 268]

Islam considered poverty to be a weakness, and it ordered the caring for the poor people.

Allah ﷻ said:

إِنْ تُبْدُوا الصَّدَقَاتِ فَنِعِمَّا هِيَ وَإِنْ تُخْفُوهَا وَتُؤْتُوهَا الْفُقَرَاءَ فَهُوَ خَيْرٌ لَكُمْ

"If you reveal your almsgiving, it is well, but if you hide it and give it to the poor (people) it will be better for you." [Al-Baqarah: 271]

And Allah ﷻ said:

وَأَطْعِمُوا الْبَائِسَ الْفَقِيرَ

"And feed therewith the unfortunate (al ba'is), the poor."[Al-Hajj: 28]

Islam made the satisfaction of these basic needs and their provision a right for the person who cannot afford them. If the person provided himself with them then it would be well, but if he could not do that because he did not have sufficient property available to him or because of his inability to obtain the required property, then *Shar'a* made helping him a duty upon others until all his basic needs are satisfied. *Shar'a* has explained in detail the ways in which an individual may be helped to satisfy his basic needs. *Shar'a* made this help a duty on his unmarriageable relatives (*Mahaarim*).

Allah ﷻ said:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لا تُكَلَّفُ نَفْسٌ إِلاَّ وُسْعَهَا لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ

"The duty of feeding and clothing nursing of mothers in a seemly manner is upon the father of the child. No one should be charged beyond his capacity. A mother should not be made to suffer because of her child, nor the father because of his child. And on the father's heir is incumbent the like of that (which was incumbent on the father)." [Al-Baqarah: 233]

That is to say that the inheritor (the heir) is like the father to whom the child is born, in regard of provision and clothing. What is meant by the inheritor is not the one who really inherits but rather the one who is entitled to inheritance. If he had no relatives who are obliged to financially support him, then his financial support (*Nafaqah*) will be carried out by the *Bait ul-Mal* from the *Zakah*. Abu Hurairah (ra) said, The Prophet ﷺ said: **'Whoever leaves after him a wealth, it belongs to his inheritors and if he left weak *(Kall)*, they will be of our responsibility"',** narrated by Muslim. *Al-Kall*, is the one who has no son and no father.

Allah ﷻ said:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ

"The alms are only for the poor and the needy..." [At-Tauba: 60]

If the alms in the *Bait ul-Mal* are not enough to meet the needs of the poor and the needy, the State is obliged to spend on them from the other revenues of the *Bait ul-Mal*. If there were no funds in the *Bait ul-Mal*, the State would have to impose taxes upon the wealth of the rich people and collect from them in order to spend on the poor and the needy. Spending (*Nafaqah*) is the duty of the relatives, if there were no relatives then the *Nafaqah* is a duty on the revenues of the alms (*Bait ul-Mal*). If there were no alms revenue then it is a duty on other revenues of the *Bait ul-Mal*. If there were no revenues in the *Bait ul-Mal* then it is a duty on all Muslims. The Prophet ﷺ said, **"In any local community, if there became amongst them a hungry person, Allah has nothing to do with them",** narrated by Ahmed.

The Prophet ﷺ said narrating from his Lord, **"He would not have believed in me, the one who slept with his stomach full when his neighbour on his side was hungry and he knew that",** narrated by Al-Bazzar from Anas.

Allah ﷻ said:

وَفِي أَمْوَالِهِمْ حَقٌّ لِلسَّائِلِ وَالْمَحْرُومِ

"In their wealth is a due right to the beggar and the deprived." [Az-Zariyat: 19]

And the Prophet ﷺ obliged the helpers (*Ansar*) to spend (*Nafaqah*) on the poor emigrants (*Muhajiroon*), which indicates that it is a duty upon all Muslims until the needs are satisfied. Regarding the duty placed on all the Muslims, the *Khalifah*, as the one responsible for looking after the affairs of the *Ummah*, has to collect the property from Muslims in order to implement that which is a duty upon them. Thus the duty is transferred from the Muslims to the *Bait ul-Mal* which performs it by feeding the poor and needy.

This is in regards to the poor and needy person who requires *Nafaqah*. He is originally obliged to acquire it by himself, if he cannot, then his *Mahram* (unmarriageable relatives) are obliged to spend upon him provided they are of that degree of relative mentioned in the Qur'an for bearing the duty of *Nafaqah*. If the relative was unable or there was no relative, then nafaqah becomes a duty upon *Zakat* from the *Bait ul-Mal*, then upon all revenues of the *Bait ul-Mal*, then upon all Muslims until revenue sufficient for all the poor and needy is collected.

With regard to those of the relatives who are obliged to pay the nafaqah of the poor and needy, it is not imposed except on the one who is not in need of others. Such a person is the one of whom it is demanded to pay *Sadaqah* (charity), while the one who is forbidden from paying *Sadaqah* is not obliged to do so. Bukhari narrated from Said ibn Al-Musayyeb that he heard Abu Hurairah (ra) say, the Prophet ﷺ said: **'The best sadaqah is that which (was given) out of sufficiency *(Ghina)*."'** Sufficiency (*Ghina*) here means the amount which the person requires to satisfy his needs. Jurists say *Ghina* (sufficiency) is that which provides the livelihood of the person and his family to such a degree of satisfaction as is enjoyed by those who are like him, together with their clothes and accommodation, in addition to a mount (eg. camel) and a uniform (outside dress) commensurate with those who are in his situation. This is what is linguistically called "sufficiency", because he is not in need of help from other people.

Thereupon *Nafaqah* (financial support) is not due to the poor and needy except from those who are better off i.e. not in need of others.

Allah ﷻ said:

لِيُنفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنفِقْ مِمَّا آتَاهُ اللَّهُ

"Let him who has abundance spend of his abundance, and he whose provision is measured let him spend of that which Allah has given him". [At-Talaq: 7]

Muslim also narrated from Jabir that **the Prophet ﷺ said, "Start with yourself and make charity for it, and if anything is left give it to your family, and if anything is left after that give it to your relatives, and if anything is left after that, do it like that, and that i.e. to that in front of you, at your right hand and at your left hand."** *Nafaqah* (financial support) of the person upon himself is satisfying his needs, which requires more than only feeding of his basic needs. This is because *Shar'a* made it obligatory upon him to support his wife in a seemly manner (*Bil-Ma'rouf*), which was explained as being according to her situation and those who are like her.

Allah ﷻ said:

رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

"The duty of feeding and clothing nursing mothers in a seemly manner." [Al-Baqarah: 233]

So his support to himself would be also in an equitable manner (*Bil-Ma'rouf*), and not only what is enough for him. The Prophet ﷺ said to Hind, the wife of Abu Sufyan, **"Take that which is enough for you and your children in an equitable manner",** narrated by Bukhari and Ahmed. He did not only say "what is enough for you"; rather he added the words "in an equitable manner" (*Bil-Ma'rouf*) which indicates that what is meant is that which is enough for her according to what is known of her and her children's needs according to their situation and the situation of those similar to them. So his sufficiency (*Ghina*) which must be fulfilled in order that he is obliged after that to provide the due support, is not estimated as that which satisfies his basic needs only,

rather it is that which satisfies his basic needs and the other needs which are accepted amongst the people as being of his needs. This sufficiency is not estimated by a certain amount, rather it is left to the person based on the standard of living that he lives by. Some jurisprudents regarded that the needs beyond which a person is considered better off concern five matters, which are: food, dress, accommodation, marriage and a mount (eg. camel) which he needs to ride in his distant functions. But this was not mentioned explicitly in the texts, rather it was of what was known as "equitable manner" (*Bil-Ma'rouf*). The sufficiency (*Ghina*) is considered as that which exceeds the fulfilment of his needs in a seemly manner (*Bil-Ma'rouf*). If his wealth exceeded that, then *Nafaqah* (financial support) is obliged upon him to the poor and needy, and if it did not exceed that, financial support is not obliged upon him.

In conclusion the poor one who is entitled to *Nafaqah* (financial support) is the one whose basic needs are not satisfied i.e. the one who needs food, dress and accommodation. While the rich person, upon whom *Nafaqah* (financial support) is due, and who is obliged of the financial duties due upon all Muslims, is the one who owns in excess of what is needed for satisfying his needs in a seemly manner (*Bil-Ma'rouf*), not only his basic needs, and this is estimated according to his situation and the situation of the people who are of similar circumstances.

16

Public Property *(Al-Milkiyyah Al- Ammah)*

Public property is the permission of the Lawgiver to the community to share the use of the asset. Assets which are public property are those which the Lawgiver stated that as belonging to the community as a whole, and those which He prevented the individual from possessing any of them singularly. This is categorised in three types:

1. That which is considered a public utility, so that a town or a community would disperse in search for it if it were not available.
2. The uncountable stores of minerals.
3. Things which, by their nature, would prevent the individual from possession.

With regard to the public utilities, they are everything that is generally considered as a utility by the people. The Prophet ﷺ explained them in the *Ahadith* by their description rather than by enumerating them. Ibn 'Abbas narrated that the Prophet ﷺ said: **"Muslims are partners (associates) in three things: in water, pastures and fire,"** reported by Abu Dawud. Anas narrated from Ibn 'Abbas adding, "and its price is *Haram* (forbidden)." Ibn Majah narrated from Abu Hurairah (ra) that the Prophet ﷺ said: **"Three things are not prevented from (the people); the water, the pastures and the fire."** This is an evidence that people are partners (associates) in water, pastures and fire, and that the individual is prohibited from possessing them. But it is noticed that the *Hadith* mentioned them as three, and they are *Jamid* (non-derived) names, and there was no mentioning of *Illah* (reason) in the *Hadith*. The *Hadith* did not include *Illah* (reason), and this could imply that these three things are the only ones which represent public property with no consideration given to their depiction for the community's need for them. However, if one scrutinised the issue he would find that the Prophet ﷺ allowed the possession of water in At-Taif and Khaybar by individuals, and they actually possessed it for the purpose of irrigating their plants

and farms. Had the sharing (association) of water been just because it is water and not because of the consideration of the community's need for it, then he would not have allowed individuals to possess it. So from the saying of the Prophet ﷺ, **"Muslims are partners (associates) in three things: in water, pastures and fire"** and from his permission to individuals to possess the water, it can be deduced that the *Illah* (reason) of partnership in the water, pastures and fire, is their being of the community utilities that are indispensable to the community. So the *Hadith* mentioned the three (things) but they are reasoned as being community utilities. Therefore this *Illah* (reason) goes along with the reasoned (rule) in existence and in absence. So anything that qualifies as being of the community utilities is considered a public property, whether or not it was water, pasture or fire i.e. whether it was specifically mentioned in the *Hadith* or not. If it ceased to be of the community utilities, even if it was mentioned in the *Hadith* like the water it would not be a community utility, it would rather be of the things which can be possessed individually. The criteria for determining things to be a public utility is that it is anything which, if not available to the community, whether the community was a group of bedouins a village, city, or a State, would cause them to disperse in search of it, then it would be considered of the community utilities, like the water sources, forests of firewood, pastures of livestock and the like.

With regards to minerals, they are of two kinds: one is of a limited quantity that is not considered significant. The other is of an uncountable quantity. As for the first type it can be an individual property, owned singularly and treated like the hidden treasure (*Rikaz*) where a fifth of it is paid to the *Bait ul-Mal*. Amr ibn Shua'ib narrated from his father, from his grandfather that **the Prophet ﷺ was asked about the Luqatah (article picked from the road) he said: "That which was picked from the publicly used road, or the village, you have to announce it for one year, if anyone demands it, give it to him, and if not, it would be yours; but if it is found in sites of ruin, then a fifth of it and of the hidden treasure *(Rikaz)* has to be paid to the Bait ul-Mal"**, narrated by Abu Dawud.

As for the uncountable quantity which cannot be normally depleted, it is a public property and should not be possessed individually due to what At-Tirmidhi narrated from Abyadh ibn Hammal **that he came to the**

Prophet ﷺ and asked him to grant him a salt laden land, and he granted it to him. And when he left, one person in attendance with the Prophet ﷺ said, "Do you know what you granted him? You granted him the uncountable water (Al-'udd)". He ﷺ then took it away from him." He compared it (in this *Hadith*) with the uncountable (*Al-'Udd*) water because it does not deplete. So this *Hadith* indicates that the Prophet ﷺ granted the salty mountain to Abyadh ibn Hammal, which means that it is allowed to grant a salt mine. However, when he realised that it was of the permanent or continuous mines which are non-depletable, he reversed his grant and took it back thereby prohibiting its ownership by individuals as it is a public property. What is meant here is not the salt, but rather the salt mine. The evidence for this is that when he knew it was non-depletable he prohibited its private ownership, despite the fact that he knew it was salt and that he had initially granted it. So its prohibition was due to its being non-depletable. Abu Ubayd said, "With regards to his (i.e. the Prophet) granting to Abyadh ibn Hammal of the salt (found) in Ma'reb, then taking it away from him, he did it considering it as a dead (unused) land which Abyadh was going to revive and cultivate. When the Prophet ﷺ realised it included uncountable (*'Udd*) water, which contains non-depletable material like the water of the springs and wells, he revoked it, because it is the *Sunnah* of the Prophet ﷺ in relation to pasture, fire and water, for which people are all associates in possession. So he disliked the limiting of possession to one person to the exclusion of others." Since salt was of the minerals, the Prophet ﷺ change of mind about its granting to Abyadh is considered a reason (*Illah*) for the prohibition of its ownership by individuals, i.e. that it is an uncountable (*'Udd*) mineral mine, not because it comprised uncountable ('udd) salt. It appears from examining this *Hadith* that the reason (*Illah*) for preventing the grant of the salt mineral mine is because it was uncountable (*'Udd*) i.e. not depleted. It appears from the narration of Amr ibn Qais that the salt in this incident is a mineral (mine) because he said, "the mine (mineral) of salt". It appears from the words of the jurisprudents, that they considered the salt of the minerals, so the *Hadith* would be related to minerals and not to salt specifically.

With regards to Abu Dawud's narration that the Prophet ﷺ granted Bilal ibn Al-Harith Al Muzni the minerals (mines) of the Qabaliah; and also what Abu Ubaid's narrated in his book (Al Amwal) from Ikrimah that he said: **"The Prophet ﷺ granted Bilal such a land from such a**

place to such a place, and that which existed in it of mountains or minerals", this *Hadith* does not contradict the *Hadith* of Abyadh. This *Hadith* is rather to interpret that these minerals which the Prophet ﷺ granted to Bilal were limited, and thus allowed to be granted, as the Prophet ﷺ did when he first granted the salt mineral to Abaydh. This *Hadith* should not be interpreted as a permission to grant such minerals in absolute terms, because it would then contradict with what the Prophet ﷺ did when he took back the minerals which he granted when he realised it was uncountable (*'Udd*), and not normally depleted. So the minerals which the Prophet ﷺ granted are to be interpreted as being limited and they (easily) deplete.

This rule, that the uncountable and undepleted minerals are considered a public property, includes all minerals, whether they on the surface of the earth where people may reach and use them without great effort, such as salt, coal, sapphire, ruby, and the like. Or whether they were of the sub-surface minerals, which are reachable only with work, like the minerals of gold, silver, iron, copper, lead and the like. And also whether they are solid like crystal, or fluid like oil. All of them are minerals, which are included within the meaning of the *Hadith*.

As for the things whose nature prevents them from coming under the domain of individual ownership, they are the assets which consist of the public utilities. Although they fall within the first category because they are from the community utilities, they differ however from it in respect of their nature which prevents them from being possessed by individuals. Water, for example, could be possessed by individuals, but this is prohibited if the community cannot manage to live without it, unlike the case with roads which certainly cannot be owned by any individual. Therefore, although the evidence for this category is that the divine reason (*Illah*) is applicable to it and that it is from the community utilities, however its nature indicates that it belongs to the public property. This category includes roads, rivers, seas, lakes, public canals, gulfs, straits and the like. Also included are things like Masjid, State schools, hospitals, playgrounds, shelters etc.

17
State Property

There are properties that do not fall under public property, rather they are included in the individual property, because they are things which can be owned by individuals, like land and moveable property. However, the Muslim populace have a right in connection to them. Therefore, these things are not from the individual property, nor are they from the public property. Thus they are State property. The State property is that property in which the Muslims masses have a right, and its management is left to the *Khalifah* who may assign some of it to them according to what he deems as appropriate. What is meant by his management of this property is that he has the authority over it to dispose of it. This is what is meant by ownership; because the meaning of ownership is that the individual has an authority over that which he owns. Thus, every property whose expenditure is subject to the opinion and *Ijtihad* of the *Khalifah*, is considered as State property. The Law Giver has made certain funds State property, where the *Khalifah* has the right to dispose of them according to his opinion and *Ijtihad*, such as the booties, *Kharaj* (land tax), *Jizya* (head tax) and the like; this is because the *Shar'a* did not determine the the area in which they may be spent. But where the *Shar'a* determined the funds should be spent, and did not leave it to the *Khalifah* to decide according to his opinion and *Ijtihad*, then this property does not belong to the State; rather it belongs to the area specified by the *Shar'a*. Therefore, the *Zakah* is not considered a State property. It is rather the property of the eight categories assigned by the *Shar'a*. The *Bait ul-Mal* is the place where the funds will be kept so as to be spent on the designated areas.

Although the State manages the public properties and State property, there is a difference between them. With reagrds to those which belong to the public property, the State has no right to assign or give its origin (body) to anyone, though it has the right to allow the people to take of it

based upon an arrangement which enables all of them to benefit from it. This is different from the State property, where the State has the right to give it all to certain individuals and not give to others, and it can prevent all individuals from having it, if it viewed that caring for their affairs necessitated that it is not given to them. So the water, salt, pastures and town parks are not allowed to be given to individuals absolutely, although all peoples can benefit from them, such that the benefit will be for all of them without specifying anyone in particular to the exclusion of others. *Al-Kharaj* could be spent only on the farmers to the exclusion of others, so as to solve the farming matters. The State is also allowed to spend it on buying weapons only, where it does not give anybody anything of it. In this way, the State dispenses of it as it views to be in the citizens' (i.e. the *Ummah's*) interest.

18
Nationalised Property is neither Public Property nor State Property

Nationalisation is one of the practices of the Capitalist system, which is the transferral of individual property to State property, if the State viewed that there was a public interest which required the ownership of this property (by the State), which is originally owned by individuals. The State is not obliged to undertake nationalisation; rather it is free to nationalise if it chose to, or to leave the property as it was without nationalisation. This behaviour is different from that regarding the public property and State property, which are according to the rules of Islam, consistent with the nature of the property and its description, and it is so, irrespective of the view of the State. Thus the reality of the property has to be examined; if there was a right of all Muslims in it, then it would be a State property and she should own it. But if all the Muslims had no right in it, then it remains an individual property, which the State should not own. And if the property is of the community utilities or of the minerals, or its nature does not allow its individual ownership, then it becomes naturally a public property and the State cannot keep it as an individual property. If such property was not of the category of public property, then it has to remain as an individual property, and the State absolutely cannot nationalise it, nor can it own it against the will of its owner, unless he accepted to sell it to the State as he would sell to any individual, and the State bought it from him as any individual would buy it. Thus the State cannot own the properties of individuals by force, under the pretence of the public interest, even if it paid its price; this is because the individual's properties have to be respected and protected, and no one is allowed to commit aggression with regards to them even if it was the State. If this took place, the aggression would be considered eligible to be a subject of complaint, which the individual owner could submit to the *Mahkamat al-Mathalim* (court of unjust acts), allowing his complaint to be settled (and

the unjust act removed). This is because the *Khalifah* has no right to take anything that is under the authority of anybody, except by a known and confirmed right. The State also cannot keep any part of the public or State properties in the hand of an individual under the pretence of the public interest, because the interest of the properties has been determined by the *Shar'a* when it identified the public property, State property and the individually-owned property.

Thus, it becomes clear that property owned by nationalisation is not considered to be of the public property, nor of the State property, or is it of the divine rules; it is rather one of the patches of the capitalist system.

19

Seclusion (*Hima*) in the Public Interests

There is a right for all the people to benefit from the public utilities, for the purpose for which they are designated. They should not be used except for the purpose for which they are designated. Thus, it is not allowed to use a road for the purpose of a recess (parking for a break), nor parking to trade, nor anything that the road did not exist for. This is because the road exists for the purpose of travelling upon it; unless it were to be used in such a way that does not interfere with travelling; and this marginal use is evaluated as that which does not cause harm or difficulty for passers by. Rivers also should not be used for other than the matter, which they exist for. So if a river exists for irrigation, as would be the case for example with a small river, then it should not be used for navigation (shipping), while if it exists for both matters, like the Nile and Tigris, it may be used for both.

Also no one is allowed to designate for himself anything from the public utilities, like the pastures, Masjid and seas. The Prophet ﷺ said: **"There is no seclusion (Hima) except for Allah and His Messenger,"** narrated by Abu Dawud through Ass'ab ibn Jathama. The origin of seclusion (*Hima*) to the Arabs was that their chief, when he camped in a fertile place, would let a dog bark at the top of a high place, and wherever the voice of the dog reached on all sides, that area would be protected for him, and no one would be allowed to send his cattle (flock) to graze inside it, while he was still able to graze his flock with other people in other places. So the sanctuary (*Hima*) is the protected place, and it is different from the allowed (*Mubah*) place. Thus, Islam prevented people from secluding any of the public things for their own use to the exclusion of the others. Accordingly, the meaning of the *Hadith* is that no one is allowed to protect (for one's use) any of those things, which belong to all Muslims, except Allah and His Messenger, for only they have the right to protect any of these things they deem appropriate. The Messenger of Allah ﷺ acted in accordance with this, so he protected

some places. It is narrated from Ibn 'Umar, **"that the Prophet ﷺ protected the (land of) Naqee'a for the horses of the Muslims,"** narrated by Abu Ubayd in the book of *Al-amwal* (properties) i.e. the Prophet ﷺ protected a place called an-Naqee'a i.e. a land which was thoroughly soaked with water and was therefore fertile, it was 20 *farsakh* (a measure of length) from Al-Madina. So people were prohibited from inhabiting this dead (uncultivated) land, thus the pastures could grow, and special flocks were allowed to graze whilst others were prohibited. What is meant here is that he reserved it for the horses used in *Jihad* in the way of Allah. The Khulafaa of the Prophet after him also protected land – 'Umar and Uthman protected some of the public places, and this matter became known to the *Sahaba* and none of them denied it, so it became an *Ijma'a-as-sahaba* (concensus of the companions). It was also narrated from Amir ibn Ubaydullah ibn az-Zubair from his father, that he said: "A Bedouin came to 'Umar and said: 'O Ameer of the believers, this is our country on which we fought in jahiliyyah (days of ignorance) and became Muslims on it, so why do you protect it?' 'Umar bowed his head and started to blow and twist his moustache, as he used to twist his moustache and blow when something worried him. When the Bedouin saw him doing that, he repeated what he had said to him. Then 'Umar said: "The property (*Mal*) belongs to Allah, and the human beings are servants of Allah. By Allah had I not been charged with that in the way of Allah (*FeesabeelIllah*) I would not have protected one handspan of the land," narrated by Abu Ubayd in *Al-amwal*.

The prohibited protection mentioned in the *Hadith* includes two matters: the first is the dead (uncultivated) land, which is allowed for the person to inhabit and take from. And the second is the protection of the things which the Prophet ﷺ made the people associates in, like the water, pastures and fire; for example where someone designates a canal of water to irrigate his plants and prevents others from doing the same. Ahmed narrated from Iyas ibn Abd that he said: **"Do not sell the excess water as the Prophet ﷺ forbade selling water."** Hisham narrated from Al Hassan, that the Prophet ﷺ said: **"Whoever prevented the excess water to prevent with it the excess pasture, Allah will prevent him of His bounty on the Day of Judgement",** narrated by Abu Ubayd in *Al-amwal*. Thus it becomes clear that the State is allowed to protect the dead (uncultivated) land, and that which enters into the public property, for anything that it considers to be in the interests of the Muslims, on

condition that it does not cause harm to anybody.

20
Factories

The factory, in its essence, is one of the individual properties. It is one of the things which is allowed to be owned by individuals. It has been confirmed that individuals used to own factories at the time of the Prophet ﷺ, such as those for manufacturing shoes, dresses (clothes), swords and other goods. The Prophet ﷺ consented to them and he had the *Minbar* manufactured by them, which indicates that the individual ownership of factories is allowed. But the *Hukm* (divine rule) of the factory is decided by the nature of the material which it manufactures, and the evidence of this is that the Muslims are prohibited to possess factories that produce wine, according to the *Hadith* which states that Allah ﷻ cursed the one who presses (grape to make) the wine and the one who orders this to be done. So the prohibition of pressing wine is not prohibition of pressing as such, rather it is prohibition of pressing wine specifically. Thus, pressing is not *Haram* (prohibited), rather it is the pressing to produce alcohol which is the *Haram* (prohibited) matter. Accordingly, the prohibition of the alcohol factory results from the prohibition of the materials it produces. In this way, it appears that the rule of the factory is the same rule of the material it produces. Therefore, factories have to be examined: if the materials produced by them are not of the public properties, then theses factories are of the individual properties, such as the factories of sweets, textiles, carpentry and the like. However, if the factories were for manufacturing materials which are of the public property, such as the factories of minerals which process the uncountable (undepleted) minerals, then it is allowed for them to be owned publicly, due to the material which the factory produces, be it gold, silver, iron, copper or petrol (oil), in the same way that the rule of the alcohol factory follows the rule of alcohol in prohibition. These factories are also allowed to be owned by the government, since the State is obliged to produce these minerals on behalf of the Muslims, for the purpose of their interest. These factories are also allowed to be owned by individuals, where the State can hire

them for a certain amount, which is agreed upon. However, the ownership by individuals, of the tools and factories does not allow them to use them in producing these uncountable (undepleted) minerals for themselves, because these minerals are public properties for all the Muslims. Nor is any individual allowed to own them to the exclusion of others, but they are allowed to rent them to the State for a certain defined amount, where the State uses them to produce these minerals. As for the factories which treat iron and transform it to sheets, the car factories and the like, whose materials are of the individual ownership, any individual is allowed to own them, because the materials which they produce are not from the materials of the public property. Therefore, every factory whose manufactured product is of the public property, is allowed to be owned publicly, or by the State or by individuals from whom the State is allowed to hire. Likewise, every factory whose manufactured product is of the private property, is allowed to be owned by individuals because this is from the individual ownership.

21 *Bait ul-Mal* (The State Treasury)

The *Bait ul-Mal* is the authority responsible for every income (revenue) or expense, which the Muslims are entitled to. Therefore, every property (*Mal*) that the Muslims are entitled to, and whose owner is not assigned, is assigned to the *Bait ul-Mal*, even if its owner as a category was assigned. Once the property was received, then by its receipt it is added to the rights of the *Bait ul-Mal*, whether the property actually entered into its possession or not, because the *Bait ul-Mal* is an authority and not just a place. And every right, which is due to be spent on the Muslims interests, is a right upon the *Bait ul-Mal*. If it was spent in its specified area then it becomes added to the expenses of the *Bait ul-Mal*, whether it left its hold or not. Because that which reached the governors of Muslims, or is spent by them, then the law of the *Bait ul-Mal* applies to it, whether as revenue or expenses.

Revenues of the Bait ul-Mal

The permanent revenues of the *Bait ul-Mal* are: Booties (*Fai'*), Spoils (*Ghana'im*), Land Tax (*Kharaj*), Head Tax (*Jizya*), the different types of public property revenues, the revenues of the State properties, the tithes (*Ushr*), the fifth of the hidden treasure (*Rikaz*), the minerals, and the properties of *Zakat*. But the *Zakat* properties are kept in a special place in the *Bait ul-Mal*, and they are not spent except for the eight categories mentioned in the Qur'an, and nothing of them should be spent for other than the eight categories, whether the State affairs or the *Ummah*'s affairs. But the *Khalifah* is allowed to spend them, according to his opinion and *Ijtihad*, for whom he sees fit of the eight categories. He has the right to give them to one or more of these categories, or to all of them. The revenues of the public properties are also kept in a special place (hold) in the *Bait ul-Mal*, and are not mixed with others, because they are owned by

all the Muslims, from whence the *Khalifah* spends them, within the *Shari'ah* rules, in the interest of the Muslims according to his opinion and *Ijtihad*.

The other properties, which belong to the *Bait ul-Mal*, are all gathered together, and spent on the affairs of the State and the *Ummah*, on the eight categories and on anything that the State decides. If these properties meet the needs of the citizens, that is well and good; otherwise the State levies taxes upon the Muslims in order to accomplish what is required of it in terms of looking after their affairs. In regards to the way these taxes are enacted, it should be done according to the obligations which the *Shar'a* put upon the Muslims. So concerning duties which are obligatory upon Muslims to carry out and which require expenses from the State for their execution, the State has the right to levy taxes from the Muslims so that it can execute them. Whereas those issues which are not duties upon the Muslims, such as the repayment of the debts of the dead, the State is not allowed to levy taxes in order to pay them off. If it had funds available in the *Bait ul-Mal* then it would carry this out, otherwise the State is not obliged to do so. Therefore, the State has the right to collect taxes in these instances, in which case it has to proceed as follows:

1. To meet the expenses due upon the *Bait ul-Mal* for the poor, the needy, the wayfarer and in the carrying out of *Jihad*.

2. To meet the expenses due upon the *Bait ul-Mal* as compensation, such as the expenses of the employees and the provisions of the army and the like.

3. To meet what is due upon the *Bait ul-Mal* in the form of services and utilities, such as the construction of roads, production of water, building of mosques, schools and hospitals and other things whose establishment are considered necessary for the *Ummah* and without which she would be harmed.

4. To meet the expenses due upon the *Bait ul-Mal* that arise in the form of necessity, such as emergency incidents like famine, floods, earthquakes, an attack by an enemy and the like.

5. To levy taxes to meet debts which the State incurred in order to carry out an obligation due upon all the Muslims, from any of the four cases mentioned above or whatever may have resulted from them, or any matter obliged upon the Muslims by *Shar'a*.

Other revenues which are kept in the *Bait ul-Mal* and spent upon the affairs of the citizens are the tenth (customs) collected from the citizens of countries at war with the Muslims, or which have treaties, and the properties which are of the public property or the State property, or the property which is inherited from those who had no inheritors.

Concerning the revenues of the *Bait ul-Mal* which exceeds the expenses due upon on it; if this excess came from booties then it is spent as grants which are given to the people. If the extra comes from *Jizya* or *Kharaj*, it is kept to meet the requirements of any emergencies which may fall upon the Muslims, and it should not be waived from those who are obliged to pay, because the divine law has put the *Jizya* on everyone (non-Muslim male, mature and able to pay), and the *Kharaj* on the land according to its capacity. If the extra came from *Zakat* it is kept in the *Bait ul-Mal* until any of the eight categories has demands upon it, whereupon it is spent on them. If the extra came from that which is due upon Muslims, then it would be dropped and they are excused from paying.

The Expenditures of Bait ul-Mal

The expenditures of the Bait ul-Mal are based upon six principles:

1. The expenditures for which the Treasury acts as custodian, and these are the *Zakat* funds. These will be paid to those eligible subject to availability. If the funds were available to the Treasury in the *Zakat* section, they would be paid to those among the eight categories mentioned in the Qur'an as their right. These funds must be paid to them. However, if these funds were not available, this waives their payment to those eligible; i.e. if the funds were not available to the Treasury in the *Zakat* section, then none of the eight categories would be given any money from the *Zakat* fund and the State would not have to borrow any money pending the levying of *Zakat*.

2. The expenditures which are due on the Treasury by way of "*I'aalah*"

i.e. financial support and with regard to undertaking the duty of *Jihad*; such as spending on the destitute, the indigent and the traveller, and such as the spending on *Jihad*. The eligibility of this expenditure is not subject to availability, for it is a right that must be fulfilled whether funds were available to the Treasury or not. Hence, if the funds were available, they must be paid at once. However, if the funds were not available and if it were feared that a serious hardship would be caused by delaying the payment, the State should borrow the money at once, pending its collection from the Muslims, and then pay it back. If it were not feared that a hardship would be caused, then the principle: "It is delayed to the time of ease" would apply. Hence, payment would be deferred until the funds are levied and then they would be paid to those eligible.

3. The expenditures which are due upon the Treasury by way of "*Badal*" i.e. recompense or allowance, meaning that the funds are owed to people who rendered a service to the State, they took money for their services; such as the salaries of soldiers, civil servants, judges, teachers and the like. Hence, such payments are also not subject to availability. These are rights that must be fulfilled regardless of availability or scarcity i.e. whether the funds were available in the Treasury or not. If the funds are available, they should be paid immediately; if they are not available, the State would be obliged to make them available by taking whatever is needed from the Muslims. If it is feared that a serious hardship would be caused by delaying the payment, the State should borrow the money at once, pending its collection from the Muslims and then pay it back. If it were not feared that a hardship would be caused, then the principle: "It is delayed to the time of ease" would apply. Hence, payment would be deferred until the funds are levied and then they would be paid to those eligible.

4. The expenditures that are due on the Treasury, and whose payments are due by way of "*Maslaha*" i.e. welfare and "*Irfaq*" i.e. public utilities, however without recompense; in other words the payments are spent on a host of utilities without any returns or revenues, such as roads, water services, mosques, schools, hospitals and any other similar utility whose availability is considered a necessity and whose non availability would cause hardship to the *Ummah*. Hence, the payment for these utilities is not subject to availability of funds. Rather they are an obligatory liability regardless of availability or scarcity. So, if the cash were available to the

Treasury, it should be then spent on these utilities; and if it were not available in the Treasury, the onus would be shifted to the *Ummah*; thus whatever is required for such projects in terms of finance would be collected from the *Ummah* in order to meet the costs, then the Treasury would spend on these projects. This is because any expenditure by way of welfare and without a return, and whose non-payment would cause a hardship would be a binding expenditure whether the funds are available or not. If the cash was available to the Treasury, it becomes a duty upon the State to spend on these utilities and the duty would be waived off the Muslims, But if it was not available, then the onus would be on them to provide it for the Treasury and consequently it becomes a compulsory expenditure on the Treasury.

5. The expenditures that are due upon the Treasury, and whose payments are due by way of "*Maslaha*" i.e. welfare and "*Irfaq*" i.e. public utilities, and without recompense; however, the scarcity of which would not cause hardship to the *Ummah*, such as the building of another road while a road exists, or the building of a hospital while another exists and is capable of providing adequate service, or the building of a road for which people can find an alternative road nearby or anything similar. In this case, the spending on such projects would be subject to availability only. Hence, if the funds were available to the Treasury, they should then be spent on such projects; otherwise, the duty of such expenditure on the Treasury would be waived and the Muslims would not be obliged to meet the costs of such projects, because in essence, they are not obligatory upon the Muslims.

6. The expenditures that are due upon the Treasury by way of emergency, such as famine, flood, earthquake or attack by an enemy. The payment of such expenditure is not subject to availability; rather the onus is upon the State to provide such money regardless of availability or scarcity. If the cash is available, it should be paid immediately, and if it was not, then the obligation would shift to the Muslims; in this case the money should be levied from the Muslims at once and it should be placed in the Treasury in order to spend on them. If it was feared that a delay in levying the money could cause hardship, the State must in this case borrow the necessary money and place it at the disposal of the Treasury, then pay out the money at once to those eligible and pay off the debt from what it collects from the Muslims later.

The State Budget

Each year, the democratic states draw up a general budget for their State. The reality of the budget in the democratic State is that the budget itself is issued in the shape of a law known as the Budget Bill or Law for such and such year, which Parliament then approves and enacts it as a law once it has been debated, including the appropriations of the Budget one by one, and the sums assigned to each item. Each appropriation is in fact an integral part of the Budget and these are voted on as a whole, and not individually. Hence, Parliament can either accept or reject it outright, even if it reserves the right to debate it item per item and sum per sum at the debating stage. The law of the Budget is formed of several articles, one of which is drawn up to show the funds that are earmarked for the State's upcoming expenditure in the financial year for which the Budget has been drawn up. Another article is drawn to show the State's estimates with regard to the revenues of the coming financial year. Other articles are drawn in order to earmark the expenses of certain institutions, while yet other articles are drawn in order to estimate the revenues of certain institutions. Also, certain articles are drafted in order to give the Chancellor a host of mandatory powers. In each article a reference is made to a table that includes the sections of the Budget, outlining what each article contains in terms of expenditures and revenues, then in each column the items of the section are listed; then the overall sums of each item in the section are listed in the table. It is on this basis that the Budget is drawn up each year, with slight alterations introduced each year, according to the various events. There are also a host of peripheral changes in the budget of each democratic State, and this is also according to the various events.

As for the Islamic State, she does not draw up an annual budget because the matter does not require a specific law for the budget each year. The budget does not get proposed to the *Ummah*'s Council, nor is the Council's opinion sought. This is because the budget with all its articles and sections, and the funds included in each of them, is law in the democratic system. It is a law for one single year. The law in the democratic system is enacted by Parliament, and that is why the matter is required to be proposed to Parliament for ratification. The Islamic State does not need this, because the Treasury's revenues are levied according to the *Shari'ah* rules stipulated by text and they are paid out according to

the *Shari'ah* rules stipulated by text. All of these are permanent *Shari'ah* rules; hence, there is absolutely no room for opinion seeking with regard to the revenues and with regard to the expenditures. The sections in the budget are formed of permanent sections that have been determined by permanent *Shari'ah* rules. This is as far as the Budget sections are concerned; as for the appropriations of the budget and the amounts included in each appropriation as well as the matters for which these amounts are allocated in each appropriation, all of this is down to the opinion and the *Ijtihad* of the *Khalifah*. This is because it is part of looking after people's affairs, which *Shari'ah* had conferred upon the *Khalifah* to decide based on what he deems fit; and his order is binding and must be executed.

Therefore, there is no room in Islam for the State to draw up an annual budget, as is the case in the democratic system, whether this is with regard to its sections, its appropriations its items or the amounts required for each item or each appropriation. This is why no annual budget is drawn up for the Islamic State, though she has a permanent budget for which the *Shar'a* has determined its sections for both revenues and expenditures. The *Khalifah* reserves the right to determine the appropriations and their items, whenever it is required without linking that to a particular period.

Zakat

Zakat funds are one of the funds that are placed in the Treasury. *Zakat* is different from the other funds in regards with its collection, in regards of with its collected amounts and in regards with its spending.
In regards with its collection, it is collected from the properties of the muslims only and not from the non-muslims. It is, as well, not a general tax, rather one of the pillars of Islam. Besides that, it is a property, paying of which achieves a spiritual value, like the prayer, fasting and the hajj, and it is an individual obligation paid by the Muslim.

Yet the levying of *Zakat* does not proceed in conformity with the needs of the State, nor according with the interest of society as is the case with all the other types of funds levied from the *Ummah*. It is rather a specific type of fund that must be paid to the Treasury, whether there was a need

for it or not. The muslim is not absolved of the duty to pay the *Zakat* when it becomes due on his wealth. Its payment is obligatory on the Muslim who owns the *Nisab* (minimum amount eligible for *Zakat*), after deducting his debts and his needs. *Zakat* is not an obligation upon the non-Muslim. It is however an obligation upon the adolescent and the insane, because At-Tirmidhi reported on the authority of Abdullah Ibn Amru **that the Messenger of Allah ﷺ said: "He who acts as guardian for an orphan who has property, let him trade in that property and not leave it until the Sadaqah devours it",** meaning that he should not leave it until it all perishes from paying *Zakat* upon it. As *Zakat* is an obligation upon the wealth owned by the individual, it is therefore a monetary worship and not a physical worship.

As for the amount levied, this is a specific amount which does not increase or decrease. It has been determined as a quarter of the tenth (2.5%) in gold and silver and the commercial commodities. The amount is levied from a specific sum, which is the *Nisab* or over. The *Nisab* equates to either 200 silver *Dirhams* or 20 gold *Miskals*. The gold *Miskal* is equal to a *Shari'ah* approved dinar, whose weight is 20 carats, which is equal to 4.25 grams of gold. Hence, the *Nisab* would be equal to 85 grams of gold. As for the silver dirham, it is equal to 2.975 grams, thus the *Nisab* of silver would be 595 grams of silver. If the amount was less than the *Nisab*, nothing would be taken from it. As for the *Rikaz* (ore etc..), its *Zakat* is a fifth. For cereals, such as wheat and the like, and cattle, such as camels, cows and sheep, the Scholars have explained the amount of their *Nisab* and what should be taken from them in detail.

As for the disposal of *Zakat* and the areas of its expenditure, these have also been determined by a specific limit; thus it could not be paid except for the eight categories Allah ﷻ mentioned in the Qur'an. Allah ﷻ says:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ

"The alms are only for the poor, and the needy, and those who collect them, and those whose hearts are to be reconciled and to free the slaves, and the debtors, and for the way of Allah (Jihad) and for the wayfarers." [At-Tauba: 60]

As for the poor, they are those who have money, but their expenses are higher than what they own. The needy are those with no money and no income. Allah ﷻ says:

أَوْ مِسْكِينًا ذَا مَتْرَبَةٍ

"Or the indigent (miskeen) in the dust" [Al-Balad: 16]

As for those employed for it, they are those who levy and distribute the *Zakat*. Those whose *"hearts have been reconciled"* are those the State deems appropriate to give them from the *Zakat* as an incentive to establish them firmly in Islam. Those in bondage are the slaves; they are given money so that they can be freed. This category is not existent today. Those in debt are indebted who are unable to pay off their debts. In the way of Allah means *Jihad*; whenever *"in the way of Allah"* is mentioned in the Qur'an, coupled with spending, its meaning is *Jihad*. The wayfarer is the traveller who has been cut off. It is forbidden to pay off from the *Zakat* funds to any other than from these eight categories, and it is also forbidden to spend it upon the economic matters of the State. If none of the eight categories can be found, the *Zakat* fund should still not be spent on any other area; rather it should be kept in the Treasury and then paid out to the eight categories whenever the need arises. The *Zakat* should be paid to the *Imam* or his deputy, for Allah ﷻ says:

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا

"Take alms from their properties so that you might purify and sanctify them" [At-Tauba: 103]

Also because Abu Bakr demanded *Zakat* from them; the *Sahaba* agreed with him on this and he did not ask them whether they were paying their *Zakat* to the poor or not. When they refused to pay *Zakat* to him, he fought them. It is the *Imam* who pays it to those eligible. Even if the governors are unjust, *Zakat* should be handed to them. It has been reported on the authority of Suhayl Ibn Abu Salih that he said: "I came to Sa'ad Ibn Abu Waqqas and said to him: "I have some money on which I must pay *Zakat*, and these people are as you can see, so what do you

suggest I do?" He said: "Pay it to them." So I went to Ibn Umar and he said the same; then I went to Abu Hurayra and he also said the same thing. Then I went to Abu Sa'id and he also said to me the same thing." (mentioned by the writer of Al-Mughni). *Zakat* must never be given to a Kafir whether he were a *Dhimmi* or otherwise, because **the Messenger of Allah ﷺ said to Mu'adh Ibn Jabal when he dispatched him to Yemen: "Inform them that Allah has imposed upon them a Sadaqah in their wealth, to be taken from their rich and rendered to their poor,"** narrated by Bukhari on the authority of Ibn Abbas. Hence, the Messenger of Allah ﷺ had specified that it should be spent on their poor and that it has been imposed upon their rich. It is, however, permitted to donate to the Kafir a voluntary *Sadaqah*, for Allah ﷻ says:

وَيُطْعِمُونَ الطَّعَامَ عَلَى حُبِّهِ مِسْكِينًا وَيَتِيمًا وَأَسِيرًا

"And they give the food, despite their need of it, to the indigent (miskeen), the orphan and the captive" [Al-Insan: 8]

and all the captives at the time were Kuffar.

The Head Tax (Jizya)

The *Jizya* is a right that Allah ﷻ enabled the Muslims to take from the *Kuffar* as a submission from their part to the rule of Islam. It is a general fund that can be spent on the welfare of the subjects as a whole. It becomes due every year and cannot be collected beforehand. The *Jizya* is established through the text of the Qur'an. Allah ﷻ says:

حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ

"Until they pay the Jizya with willing submission (from their hands) and feel themselves subdued" [At-Tauba: 29]

Abu 'Ubayd has reported in *Al-Amwal* (i.e. The Funds) on the authority of Al-Hassan ibn Mohammed who said: **"The Messenger of Allah ﷺ wrote to the Magi of Hajar calling them to Islam: 'He who embraces Islam, it will be accepted from him, and he who does not, the Jizya will be imposed upon him, provided no slaughtered meat of his is to be eaten and no women of his is to be wed.'"** The *Jizya* is taken from the *Kuffar* as long as they remain in *Kufr*; if they embrace Islam it will be waived from them. The *Jizya* is imposed on the head and not on the wealth; thus it is collected from every individual from the *Kuffar*, and not on the basis of the wealth. The word *Jizya* is derived from "*Al-jazaa*" (i.e. retribution). Hence it is taken as a retribution for being *Kuffar* and this means that it cannot be waived unless they embraced Islam. Also the *Jizya* cannot be waived from the *Kuffar* who take part in fighting, as it is not levied as a retribution for protecting them. It is only levied from the individual who is capable of paying it, because Allah ﷻ says:

"With willing submission (from their hands)" [At-Tauba: 29]

meaning with capability; thus it is not levied on the invalid. The *Jizya* is only imposed upon men; thus it is not levied from women nor is it levied from children, nor is it levied from the insane. Even if a woman came to live in *Dar al-Islam* and offered to pay the *Jizya* in exchange for her right of abode, she is allowed in *Dar al-Islam* and would be given leave to reside and no *Jizya* will be levied from her. No fixed amount is estimated for the *Jizya*, rather it is left to the opinion of the Imam and his own Ijtihad, provided that the amount set by the *Khalifah* is no higher than the payer could bear. Bukhari extracted that Abu Najeeh reported: "I said to Mujahid: "What is with the people of Ash-Sham? They have to pay four dinars, while the people of Yemen have to pay only one dinar?" He said: "This was determined according to prosperity." If the *Jizya* became due on a capable Kafir and he could not pay it, it will remain a debt on his neck and he would be treated like the indebted facing difficulty, thus he would be given time to pay it.

The Land Tax (Kharaj)

The *Kharaj* is a right that Allah ﷻ enabled the Muslims to take from the

Kuffar. It is a right imposed on the neck of the land that has been conquered from the *Kuffar* by way of war or by way of peaceful agreement, provided that the peace agreement stipulates that the lands is ours (ie belonging to the Muslims) and that they will continue to farm the land in exchange of a *Kharaj* that they should pay to the State. The *Kharaj* in the Arabic language means the rental and the harvest or the crop. Each land conquered from the *Kuffar* after declaring war against them is considered *Kharaji* land, and even if they embraced Islam after the conquest, the land remains *Kharaji*. Abu 'Ubayd reported in *Al-amwal* on the authority of Al-Zuhri: **"The Messenger of Allah ﷺ accepted the Jizya from the Magi of Bahrain**." Al-Zuhri said: "He who embraced Islam he ﷺ accepted it from him and his Islam ensured that his life and his wealth were safe, save for the land. That land became a booty for the Muslims because he had not embraced Islam in the first instance when he was in a position of strength", meaning when he was beyond the reach of the Muslims. As for the amount of the *Kharaj* imposed on the land, this is estimated according to the potential of the land. When 'Umar (RA) imposed the *Kharaj*, he took into consideration the potential of the land, without unfairness to the owner and without any prejudice against the farmer. In some areas, he imposed upon every *Jareeb* (a patch of arable land) a *Qafeez* and a *Dirham* and he imposed in other areas a different amount, and in the lands of Ash-Sham he imposed yet another. It was known that he took into consideration the potential of the land. If the *Kharaj* is determined according to the potential of the land, it will be levied according to the manner in which it was imposed. If the *Kharaj* were imposed over the area of the land annually, the land would then be levied at the end of the lunar year, because it is the year recognised by *Shar'a*. However, if the *Kharaj* is imposed upon the farmed area of the land, the *Kharaj* will be levied at the end of the calendar year because it is the year related to the rainfalls and to the sowing of the crop. If the *Kharaj* is imposed by way of sharing i.e. if a specific estimate is set according to what the land normally produces, the *Kharaj* will be levied as and when the crop is ripe and when it has been harvested. The Imam reserves the right to estimate the *Kharaj*, while taking into consideration the most appropriate way with regard to these three aspects, either on the area of the land, or the area of the planted part, or by way of estimating the produce. If improvements are introduced to the land, and this resulted in an increase in the produce, or if the lands have been subjected to a host of elements that led to a decrease in the amount of produce,

then the situation must be examined. If the increase was the result of an action undertaken by the farmer, such as the digging of a well or a canal, then the *Kharaj* would not be increased. If, however, the decrease was as a result of by their own doing, such as the destroying of a canal or the neglect of a well, then the *Kharaj* would not be reduced and they would be ordered to repair the damage they had caused. If the increase or decrease was caused by the State i.e. if the State were to dig a well or if on the other hand she were to neglect the repair of the wells and the canals, in this case she reserves the right to increase the *Kharaj* and she has also to reduce it when the produce decreases. If the decrease or the increase were to occur due to natural elements, such as the uprooting of trees by a hurricane or the destroying of the canals due to a torrent, in this case the land will be levied according to its potential lest the farmers are wronged. The *Kharaj* should be estimated for a specific and known period of time and it should not be permanently fixed. This estimate changes when the period ends and a new estimate will be fixed according to the potential of the land at the time of estimation for the new period.

Taxes

The revenues of the *Bait ul-Mal* as decided by *Shar'a* are enough to manage the affairs of the citizens and to look after their interests. The matter does not require the imposition of direct or indirect taxes. Yet *Shar'a*, as a precaution, classified the needs of the *Ummah* into two parts: One part of these needs the *Shar'a* obliged on the *Bait ul-Mal* i.e. on the permanent revenues of the *Bait ul-Mal*. Concerning the other part of these needs, *Shar'a* obliged it on all the Muslims, and gave the State the right to collect funds from them to meet these needs. Therefore, taxes are of those revenues, which Allah ﷻ placed on the Muslims so as to discharge their interests. And Allah ﷻ made the Imam a guardian over them, where he collects these funds and spends them in the way he decides fit. It is proper for these collected funds to be called a tax and to be called a due fund or called otherwise. No taxes are taken other than those revenues which Allah ﷻ obliged and *Shar'a* stated, such as the *Jizya* and *Kharaj*, and those which Allah ﷻ obliged the Muslims to fund their expenditure, such as roads and schools. So no fees are taken for the courts, the State departments, or for any other service. As for the customs taxes, they are not considered to be part of the collected taxes, they are

rather dealing with other states the same way they deal with us, and they are not a tax to meet the expenses of the *Bait ul-Mal*, and *Shar'a* has called them *Mukus* (customs), and it prohibited that they are collected from Muslims and *Dhimmi*s. Other than the taxes that *Shar'a* prescribed, absolutely no tax should be taken, because it is not allowed to take from the Muslim funds anything without a divine right which the detailed *Shar'a* evidences explained. And there is no evidence indicating the permissibility of taking any tax from any Muslim, except those mentioned earlier. As for the non-Muslims, no taxes are taken from them, as the discharging of the needs of the citizens, which the *Shar'a* obliged was laid upon Muslims only, so taxes are only taken from Muslims. No tax is taken from non-Muslims other than the *Jizya* alone; and the *Kharaj* is taken from the Muslims and non-Muslims on the *Kharaji* land. As for how the tax is taken from Muslims, it is taken from that which exceeds their expenditure (*Nafaqah*), and from that fund which is legally considered to be given out of sufficiency (*Ghina*).

What is considered to be out of sufficiency is that which exceeds the satisfaction of one's basic needs and one's luxuries in a seemly way, because the *Nafaqah* (financial support) of the individual upon himself is to meet all his needs which require satisfaction in a seemly way, and according to the standard of living with which he lives in the community. This amount is not evaluated with a specific amount for all the people, rather it is estimated for every person according to his standard of living. If he was of those who needs a car and a servant then the amount is decided as that which exceeds this. And if he needed a wife, the amount is estimated as that which exceeds his marriage requirements, and so on. If what he owned exceeded these needs, a tax is collected from him, and if it did not exceed that, no tax is collected, because he would not be free of want.

When taxes are imposed they should not be aimed at preventing the increase of wealth of individuals, nor preventing people from becoming rich, because Islam does not prohibit one from becoming rich. No other economic factor is considered for collecting the taxes; rather the tax on the funds is taken on the basis that the funds available in the *Bait ul-Mal* have to be enough to meet the needs required of it. So taxes are taken according to the needs of the State for its expenses, and nothing is considered in that case except the needs of the citizens and the ability of

the Muslims to pay the taxes. Tax is not estimated according to increasing or decreasing (or variable) ratios. Rather it is estimated with one ratio upon all Muslims regardless of the amount of the funds from which it is taken. When the ratio is estimated, justice amongst Muslims has to be observed, so it is not taken except out of sufficiency, and it is taken from the whole amount that exceeds the needs, and not from the income only, with no difference between capital, profit or income, so it is taken from all the funds. The production tools necessary for work in industry and farming, nor land, or immovable property are considered part of the capital.

22
Distributing Wealth among the People

Islam allows individual ownership, but has determined the manner of ownership. It has permitted the individual to freely dispose of what he or she owns, but it has also determined the manner of disposal. Islam has taken into account the disparity in the physical and mental abilities among the humans; therefore it has made provision to help the weak and the needy, by commanding the wealthy to give to the poor and needy. Islam has also made the utilities, which are in their nature indispensable to the community, a public property for all Muslims, and has forbidden any person from privately owning or protecting for himself or for others such utilities. It has also delegated the responsibility of providing the wealth, either as commodities or as services, to the State, and it has also permitted the State to exclusively acquire certain properties.

Islam has therefore guaranteed the livelihood for each citizen of the State, and ensured that the community does not fragment but rather remains cohesive. Islam has also protected the interests of the individuals and guaranteed the management of the community affairs, and the preserving of the entity of the State, which has been delegated with the necessary mandatory powers to carry out her economic responsibilities. This, however, could only be achievable if the society maintained a pattern which enables the wealth to reach each individual within the society, and if in turn the individuals within the society were collectively adherent to all of the *Shari'ah* rules. However, if the society were based on flagrant disparities, as is the case nowadays in the Islamic world, then a balance through a new process of distribution must be struck between the citizens in order to bring about a rapprochement in the provision of basic needs.

Furthermore, if people's minds were to suffer deviation in the implementation of the *Shari'ah* rules, due to misconception, or an

incidental corruption; or if the State were to neglect its duties or abuse its powers, then they would go astray and society would deviate from the right course. This would lead to egoism, selfishness and mismanagement of the individual ownership, and it would in turn lead to the maldistribution of wealth among people. That is why a balance between individuals must be maintained, and were it to be lacking, it must then be generated.

Two matters could lead to the maldistribution of wealth among people. The first would be to allow the circulation of wealth exclusively among the rich; and the second would be to deprive people from that wealth, and to prevent them from acquiring the means of circulation of that wealth. Islam has solved these two matters by decreeing a host of *Shari'ah* rules designed to ensure that the wealth is circulated among all people with no exception. Islam has also decreed some *Shari'ah* rules which prevent the hoarding of gold and silver, for they represent the means of exchange, and which ensure their circulation within the society among all individuals. This would redress the corrupted society, and the deviated or the society likely to deviate and it would aim at providing the wealth to all the citizens, one by one until each individual has his basic needs fully satisfied, and each individual has been enabled to acquire as much of the luxuries as he can.

Economic Equilibrium in Society

Islam has made the circulation of currency between all citizens an obligation, and it has forbidden the restriction of such circulation to a certain group of people to the exclusion of others. Allah ﷻ says:

كَيْ لا يَكُونَ دُولَةً بَيْنَ الأَغْنِيَاءِ مِنْكُمْ

"Lest it circulates solely among the wealthy from amongst you." [Al-Hashr: 7]

If there were an excessive disparity between individuals within society in terms of securing the needs, and if society needed to be rebuilt anew, or if this disparity was caused by neglect of or the indifference in the implementation of the Islamic rules, the State would be under obligation to redress the situation by handing out financial assistance to those in

need, until these basic needs were satisfied, and until a balance in distribution was struck. The State should endeavour to provide both movable and immovable commodities, for its aim should not only be to temporarily fulfil one's needs, but also to provide the means which would assist the individual in his quest to fulfil his own needs over the long term. If the State were short of funds, and if its revenues were insufficient to generate such a balance within society, it would be wrong for it to impose taxes on its citizens for the sake of bringing about such balance, for this matter is not the duty of all the Muslims; it should rather endeavour to generate funds from sources other than taxes, such as the war booties and public properties in order to bring about the balance. Therefore, whenever the State feels that there is a disparity in the economic balance within society, it should address this disparity by handing out financial assistance from the treasury to those in need, provided funds gained from booties and public properties were available.

When the Messenger of Allah ﷺ realised that there had been a disparity in wealth between the Muhajireen and the Ansar, he ﷺ divided the booty gained from Bani Nadheer exclusively among the Muhajireen, in order to generate an economic balance. It has been reported 'that when the Messenger of Allah ﷺ peacefully conquered Bani Nadheer and then expelled the Jews from it, the Muslims asked the Messenger of Allah ﷺ to divide the booty among them; so Allah ﷻ revealed the following verses:

وَمَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْهُمْ فَمَا أَوْجَفْتُمْ عَلَيْهِ

"What Allah has bestowed on His Messenger from them, for this you have madeno expedition" [Al-Hashr: 6]

So Allah ﷻ had placed the wealth gained from Bani Nadheer exclusively at the disposal of the Messenger of Allah ﷺ, to spend in whichever way he deemed fit. The Messenger of Allah ﷺ divided it among the *Muhajireen* and did not give any of it to the Ansar except to Abu Dajana Sammak ibn Kharsha and Sahl ibn Haneef who both were at that time poor just like the *Muhajireen*.' It has been reported on the authority of Ibn Abbas that the Messenger of Allah ﷺ said to the Ansar: **"If you wish I could ask you to share your homes and your wealth with the Muhajireen and divide among you this booty, or if you wish you could keep your homes and your wealth and I shall not have to give you anything from this booty."** Upon this the Ansar said: 'We would rather share our homes and wealth with our brothers and let them have the booty as well.' Allah ﷻ then revealed:

وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ

"But they give them preference over themselves even though poverty was their own lot" [Al-Hashr: 9]

Therefore, Allah ﷻ saying:

كَيْ لا يَكُونَ دُولَةً بَيْنَ الأَغْنِيَاءِ مِنْكُمْ

"Lest it circulates solely among the wealthy from amongst you." [Al-Hashr: 7]

means lest it circulates only amongst the rich. The Arabic word "*Doola*" means the object that circulates or changes hands amongst people; it also refers to the circulated wealth; this means that the booty which by right should be granted to the poor to help them secure a living, should not be exclusively circulated among the rich.

The booty of Bani Nadheer, which is part of the funds of the *Bait ul-Mal* that belonging to all the Muslims, was exclusively shared among the poor while the rich were excluded, in order to strike a balance in the provision of the basic needs within the society. Handing out financial aid from the treasury is performed by the State, provided these funds have not been collected from the Muslims, but rather from the war booties and the public properties revenues. If the funds have been collected from the Muslims, it should not be spent on generating such a balance. This approach should be followed at all times, for the precept lies in the generality of expression not in the particularity of the cause. Therefore, the *Khalifah* must ensure that the economic balance is established by handing out financial assistance exclusively to the poor from the treasury's funds, which belong to all the Muslims, thereby ensuring that economic balance is maintained. However, this is not considered to be part of the fixed expenditure of the treasury, but rather

a remedy for a specific situation from specific funds.

The Prohibition of Hoarding Gold and Silver

The phenomenon of maldistribution of wealth among individuals all over the world is one of the realities reflected clearly in all aspects of daily life, to the extent that this does not require an evidence to be proven, and what people suffer due to the flagrant disparity in meeting their needs cannot be over-emphasised. Capitalism had made several attempts at tackling this phenomenon but to no avail.

When the capitalist economists study the theory of income distribution, they completely ignore the mal distribution of individual income, and become contented with the publication of figures and statistics without offering a solution and without any comment.

Apart from the quantitative restriction of ownership, the Socialists have not been able to conjure up a solution to this phenomenon. As for the communists, their solution was the prohibition of ownership. Islam on the other hand has ensured the effective and efficient distribution by determining the means of ownership and the method of disposal, and also by offering the needy financial assistance which secures for them a relative parity in meeting their needs with other members of society. Islam has therefore provided a solution to the phenomenon of maldistribution.

However, despite the relative parity among people as far as the basic needs are concerned, there may be some very wealthy individuals in the society; Islam has not imposed the parity on ownership, but rather obliged that every individual is independent from others in his ordinary needs. Bukhari reported that the Messenger of Allah ﷺ said: **"The best sadaqa is that which is given out of one's wealth after sufficiency."** These large amounts of wealth prepare the ground for their owners to save, and help them acquire large incomes. Therefore the wealth remains intact, for wealth generates wealth, although personal effort plays a part in gaining such wealth and in generating the opportunities to invest the wealth. This does not pose a danger to the economy, on the contrary, it helps increase the economic wealth of the community as well as the individual.

The danger lies in the hoarding of monies by some individuals with very large fortunes, leading to the fall in the standard of income and causing wide unemployment thus pushing people into poverty. It is therefore essential to tackle the hoarding of monies. Money is the medium of exchange between two properties, or between a property and a service, or between two services, hence it acts as a measure to this exchange. Therefore, when money becomes scarce and people are unable to obtain it, the exchange vanishes and the economic wheel comes to a grinding halt. The more that money changes hands, the more economic activity proceeds.

This is because every person's or company's income must originate from another person or company. Funds levied by the State are regarded as income to the State and an expense to the individuals, and the monies spent by the State on employees, projects and servicemen's salaries etc. are in fact incomes to those people and an expense to the State; the monies spent by the employee, the serviceman, among others are incomes to those who sell their goods and services to those people, such as butchers, grocers, landlords, traders etc. Therefore, people's incomes and their overall spending would be constantly circulating. If a person were to hoard a sum of money, he would in fact be withdrawing it from the market, and this would lead to a decrease in spending and to a decrease in the income of persons who would have had dealings with that person had he not hoarded that money. This in turn would lead to a decrease in their production, for the demand for goods decreases, thus leading to unemployment and an overall economic decline. Therefore, the hoarding of money leads definitely to unemployment and to economic decline due to the decline in people's incomes.

It should however be made clear that this damage to the economy emanates from money hoarding and not from saving; saving does not halt the employment cycle whereas hoarding money does. The difference between hoarding money and saving is that the former means accumulating money without purpose. It means taking money away from the market, whereas, the latter i.e. saving, means accumulating money for a purpose, such as saving to build a house, or for a wedding, or to set up a business etc. This type of money accumulation does not affect the market nor does it affect the employment cycle, for it does not lead to taking money from the market, rather it means saving a sum in order to

spend it at a given time, thus the money will circulate again once it is invested, there is therefore no harm in saving, unlike hoarding the money for no real purpose.

Islam has made it lawful to save gold and silver, for it means the accumulation of money for a purpose. Islam has permitted the "*Mukatib*" (contracting slave) to work and save money in order to pay for his freedom; Islam has also permitted a man to save money in order to accumulate a dowry for a woman he wishes to marry, or to save money in order to go to *Hajj* etc. The saver would only have to pay the *Zakat* due on the accumulated money if it reached the *Nisab* and remained in his possession for a full year. When the verse was revealed prohibiting the hoarding of gold and silver, these two metals represented at the time the units of exchange and measure of the effort spent (in work) and the units of value put on goods, services and properties, whether these were minted or not; the prohibition was therefore directly linked to the fact that they represented the unit of exchange.

The hoarding of gold and silver was prohibited explicitly in the Qur'an. Allah ﷻ says:

وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلَا يُنفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ

"And let those who hoard gold and silver and do not spend them in the way of Allah know that a severe and painful punishment is awaiting them." [At-Tauba: 34]

This warning of severe punishment for those who hoard gold and silver serves as a clear evidence that the Law Giver has decisively ordered us to refrain from doing so; it is therefore forbidden to hoard gold and silver.

Evidence of the fact that the verse has conclusively forbidden the hoarding of gold and silver is reflected in the following:

1. The generality of the verse: The text of the verse in *Mantuq* (words)

and in *Mafhum* (meaning) serves as evidence about the clear-cut prohibition of hoarding gold and silver. To say that the hoarding of gold and silver is permitted once the *Zakat* has been paid would mean abandoning the rule of the verse, which is clearly indicated. This cannot be deduced from the verse unless there were another evidence, independent from this verse, leading to such an understanding or abrogating the rule of the verse. And there is no such sound text to lead us to understand other than what the verse clearly indicated, nor is it likely that such an evidence exists to avert its meaning, for the verse is conclusive in meaning. The other possibility would be that the verse has been abrogated, and there is no evidence to suggest that it has been abrogated. As for the verse where Allah ﷻ says:

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ

"Take from their wealth a Sadaqah that would purify them" [At-Tauba: 103]

This verse was revealed in the second year of Hijra when the *Zakat* was made compulsory, whereas the verse of the *Kanz* (hoarding) was revealed in the ninth year of Hijra; and the earlier revelation does not abrogate the later revelation. As for the *Ahadith* relating that the wealth whose *Zakat* has been paid is not regarded as a hoarded wealth, these *Ahadith* have not been proven sound (*Sahih*) except the *Hadith* reported by Al-Daraqutni and Abu Dawud on the authority of Umm Salama; as for the other *Ahadith* in relation to this matter, they are fabricated and refuted in narration and in meaning i.e. in *Sanad* (chain) and in *Matn* (content). As for the *Hadith* of Umm Salama, it cannot abrogate the verse even if it were *Mutawatir*, for the prophetic *Ahadith* cannot abrogate the Holy Qur'an, even if these were *Mutawatir*, for the Qur'an is definite in text, and we worship Allah ﷻ with the Qur'an in words and in meaning, whereas the *Mutawatir Hadith* is only definite in meaning, and we do not worship Allah ﷻ in the words of the *Hadith*, so the Qur'an cannot be abrogated by the *Ahadith* even if these were Mutawatir. So how could the individual report, such as that of Umm Salama, abrogate a verse that is definite in text and definite in meaning?

2. At-Tabari extracted in his commentary on the authority of Abu Umama Al-Bahili who said: **"A man from the people of the Suffa**

(poor) died and a dinar was later found in his garment, upon this the Messenger of Allah ﷺ said: 'That is a branding (burn)." Then another man died and two dinars were found in his garment, and upon this the Messenger of Allah ﷺ said: 'That is two brands.'" This was because the two men were living off the Sadaqah while they had gold. One *Dinar* or two do not reach the *Nisab* in order to say that *Zakat* is taken out of them. So when the Messenger of Allah ﷺ said about them **"a branding and two brandings"**, he ﷺ was referring to them as hoarding, even though the amount is not liable for *Zakat*. He ﷺ was referring to the verse of the hoarding where Allah ﷻ says:

يَوْمَ يُحْمَى عَلَيْهَا فِي نَارِ جَهَنَّمَ فَتُكْوَى بِهَا جِبَاهُهُمْ وَجُنُوبُهُمْ وَظُهُورُهُمْ

"On the day their wealth will be heated in hell fire, and with which their foreheads, flanks and backs will be branded" [At-Tauba: 35]

3. The text of the verse contains a warning against two matters: The first is against the hoarding of money, and the second is against not spending in the way of Allah i.e. those who hoard gold and silver and do not spend them in the way of Allah, a punishment would be awaiting them. This clearly indicates that he who does not hoard money and does not spend in the way of Allah is sinful, and he who hoards and does spend in the way of Allah is also sinful. Al-Qurtubi said: "He who does not hoard and does not spend must be like that (sinful) as well." What Allah ﷻ means by *"in the way of Allah"* is *Jihad*, for it is linked to spending. The phrase *"in the way of Allah"* means *Jihad* if it is linked to spending. It came in the Qur'an with this meaning alone, and nothing else; this phrase does not appear in the Qur'an linked with spending without it meaning *Jihad*.

4. Bukhari reported on the authority of Zayd Ibn Wahab who said: "I passed by Abu Dharr in Al-Rabtha so I asked him: 'What brought you here?' He replied: 'We were in Ash-Sham where I recited:

وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلا يُنفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ

"And those who hoard gold and silver and do not spend it in the way of Allah, then tell them that a painful punishment is awaiting them." [At-Tauba: 34]

Mu'awyya said: "This does not concern us, it only concerns the people of the book." Abu Dharr said: "It does indeed include us and them." This was also reported by Ibn Jarir on the authority of Ubaydullah ibn Qasim from Hassam from Zayd Ibn Wahab from Abu Dharr: "The incident was mentioned and it was added: The argument about the matter between Mu'awyya and myself became heated so he wrote to Uthman complaining about me. Then Uthman wrote to me and summoned me to him, so I went to him. When I reached Madinah people overwhelmed me as if they hadn't see me before, so I complained about the matter to Uthman, he said to me: "Distance yourselves slightly (away from Madinah)", so I said: "By Allah I shall never abandon what I have been saying." Therefore, the argument between Abu Dharr and Mu'awyya was regarding whom the verse referred to, and not regarding its meaning. Besides, had there been a *Hadith* at the time stating that the money for which its *Zakat* has been taken out would not be considered as hoarded wealth, then surely Mu'awyya would have used it to argue his case and refute Abu Dharr. It is likely that such *Ahadith* have been fabricated after the Abu Dharr incident, and it has also been confirmed that such *Ahadith* are not classified as *Sahih*.

5. Linguistically, *Al-Kanz* (hoarding) means piling up money, and hoarded money means accumulated money. *Kanz* also means anything piled up and hidden underground or overground. The words of the Qur'an can only be explained with the linguistic meaning, unless a *Shari'ah* meaning to such words is mentioned, in which case they would then be explained with the *Shari'ah* meaning. It has not been established that the word *Kanz* has had a *Shari'ah* meaning, therefore it must be explained with its linguistic meaning only, which is to hoard money and pile it up without purpose. This hoarding is abhorred and it is the one which Allah ﷻ warned against and for which He promised the perpetrator a severe punishment.

23
Riba and Currency Exchange *(Sarf)*

Riba (usury) is the practice of taking property for another property of the same type unequally. The money exchange (*Sarf*) is the practice of taking a property for another property from gold and silver of the same type equally, or of two different types equally or preferentially. The exchange can only take place in trade, as for usury, it can only happen in a trade (*Bay'u*) transaction, in a loan (*Qardh*) or in a *Salam* (forward buying). Trading (*Al-Bay'u*) is the practice of exchanging property for property resulting in an exchange of property; this is permitted for Allah ﷻ says:

وَأَحَلَّ اللَّهُ الْبَيْعَ

"And Allah has made trading lawful" [Al-Baqarah: 275]

And because Bukhari reported on the authority of Hakeem Ibn Hizaam **that the Messenger of Allah ﷺ said: "The two trading parties possess the right of withdrawal (from the deal) unless they separate."** As for the Salam, this means handing over a commodity immediately for a defined commodity which is to be handed over at a specific time in the future (*Ajal*). *Salam* also known as *Salaf* (credit). It is one type of trading and it is contracted in the same way as the trading, but with the wording of Al-Salam. This is permitted for Allah ﷻ says:

يا أيها الَّذِينَ آمَنُوا إِذَا تَدَايَنتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ

"When you contract a debt for a fixed period, write it down" [Al-Baqarah: 282]

Ibn Abbas said: "I bear witness that the guaranteed *Salaf* (borrowing), to a fixed future date, has been made lawful and allowed by Allah "Azza

Wa Jall", then he recited the verse:

يا أيها الَّذِينَ آمَنُوا إِذَا تَدَايَنتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ

"When you contract a debt for a fixed period, write it down" [Al-Baqarah: 282]

Also because the two Sheikhs (i.e. Bukhari & Muslim) reported on the authority of Ibn Abbas who said: **"The Messenger of Allah ﷺ arrived in Madinah while people were lending and borrowing dates over two or three years, so he ﷺ said: 'If any of you lends anything, let it be in a known measure or a known weight and for a known period of time.'"** As for the *Qardh* (loan), it is a type of *Salaf*, which is to give property to someone in order to restore it from him later and this is lawful. Muslim reported on the authority of Abu Rafi'i **"that the Messenger of Allah ﷺ borrowed a young camel from a man, then he received Sadaqah in the form of camels. So he ﷺ ordered Abu Rafi'i to give the man his young camel; Abu Rafi'i came back to him and said: 'I only found a four year old camel.' Upon this he ﷺ said: 'Give it to him, for the best people are those who pay back their debt in the best manner.'"** Ibn Hibban reported on the authority of Ibn Mas'oud that the Messenger of Allah ﷺ said: **"No Muslim would give another Muslim a loan twice, except that one would be written for him as charity."** Also because it has been established that the Messenger of Allah ﷺ used to borrow.

Riba (Interest/Usury)

Usury does not take place in the *Bay'a* (trade) and the *Salam* (advance sale) except in six items only, and they are: dates, wheat, barley, salt, gold and silver. As for the *Qardh* (loan), usury can take place in all its types i.e. in everything; it is forbidden for a person to lend something to another, and to expect more or less for it, or to receive something different in return. The settlement of the loan or anything borrowed should be by the same amount and the same type of goods borrowed. The difference between the trading and the *Salam*on the one hand, and the *Qardh* on the other hand, is that the former can be exchanged for a different type or for the same type, whereas the *Qardh* can only be exchanged for the

same type and nothing else. As for the evidence that usury can only take place in the six mentioned items, this is derived from the general consensus of the Sahaba and because Muslim reported on the authority of Ubada ibn as-Samit **that the Messenger of Allah ﷺ said: "The gold for gold, the silver for silver, the wheat for wheat, the barley for barley, the dates for dates and the salt for salt; like for like, measure for measure and hand to hand (i.e. immediately) and if they differed sell as you wish if it was hand to hand."** The general consensus of the Sahaba and the *Hadith* have mentioned that specific things are subject to *Riba*, thus it cannot occur except within these things. The *Shari'ah* principle stating that: "All things are originally permitted unless there is evidence about the prohibition" applies to the things in which *Riba* occurs. Evidence has not been established regarding any other things except these six that are mentioned, therefore *Riba* only occurs in them. Things which are from the same origin and things which fit the description, as the six mentioned, are included and they follow the same rule, but nothing else. As for the reason (*Illah*) behind prohibiting these things, there is no *Shari'ah* text to that effect, therefore no reason must be deduced in this instance, simply because the reason must be a *Shari'ah* one and not rational; and if the reason cannot be deduced from a text, it cannot be recognised.

As for the analogy of the reason, this also cannot be deduced in this instance, for the condition of making analogy in the reason itself must be the presence of a clear and understood description in order that analogy can be made to it. If there were no clear description to be found, there can be no reason behind the rule of prohibition; and things like a primary noun (not derived from a verb form) and a vague description cannot be regarded as divine reason, and analogy cannot be made from it. For instance, when the Messenger of Allah ﷺ said, as reported by Ibn Majah on the authority of Abu Bakra: **"A judge must not sit to pass judgement between two disputing parties when he's in a State of anger."** Anger was considered as the reason for preventing the passing of judgement; this is because it is clearly understood that anger is the preventive factor, thus it was an "*illa*" (reason); the reason itself was deduced from the understanding of the text, which is that the prevention was because of it. This understanding entails that the mind is confused; therefore analogy can be made to anger or anything similar to what made anger as the reason (*Illah*) i.e. it would cause the mind to be in a state of

confusion, such as severe hunger for instance. In such cases, it would be right to make analogy with the anger on anything else, for the expression of "anger" is a description that explains the prevention of passing judgement. This is unlike Allah ﷻ's saying:

حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ

"Carrion meat has been made unlawful to you" [Al-Ma'idah: 3]

Carrion is not an explanatory description of prohibition, therefore, analogy can not be made to it and the prohibition would in this case be restricted to the carrion meat. Also if usury has been prohibited on wheat, it cannot be used as analogy for anything else, for wheat is a primary noun, and not an expression that carries an understanding. It would be wrong to say that usury has been forbidden in the wheat because it is food, for it is not an expression that carries an understanding, thus it cannot be considered as a reason for the prohibition and it cannot be used as an analogy on other things.

As for the Messenger of Allah ﷺ *Hadith* reported by Muslim on the authority of Mu'mmar ibn Abdullah: **"The food for food, in equal quantities"**, and the *Hadith* reported by Ahmed on the authority of Abu Sa'id Al-Khudri **"that the Messenger of Allah ﷺ divided among them different types of food, some of which was better than the other, so he said: 'We started bidding amongst ourselves so the Messenger of Allah ﷺ prohibited us from doing so and ordered us not to trade in it except by measure for measure with no increase whatsoever'".** As well as the *Hadith* reported by An-Nisai on the authority of Jabir that the Messenger of Allah ﷺ said: **"A heap of food must not be traded for another heap of food, nor the heap of food for the fixed measure of food."** All these *Ahadith* do not indicate that the reason of prohibition is the food. Rather they merely indicate that usury does occur in the foodstuffs, therefore it includes all types of foodstuffs which makes it a general rule; then came the *Hadith* of the Messenger of Allah ﷺ to specify the types of food in which usury occurs. This is so because there are many other types of foodstuffs where usury, if it occurred, would not be forbidden e.g. aubergines, courgettes, carrots, the sweet, peppers, garlic and grapes are foodstuffs. Usury does not occur in them according to

Ijma'a of the *Sahaba*, despite the fact that the expression of food does apply to them, for they are edible things; and because Muslim reported on the authority of Ayisha (ra) that the Messenger of Allah ﷺ said: **"No prayer when food is ready",** i.e. the food is ready to eat. Therefore, if usury occurred in every type of food, the above mentioned foods would have been the subject of usury; this indicates that the *Hadith* of food is general and usury occurs in the types specified by the Messenger of Allah ﷺ in his saying : **"The wheat for wheat, the barley for barley, the date for dates..."**. And just as the Qur'an can be specified by the *Hadith*, so can the *Hadith* be specified by another *Hadith*. Therefore, usury in the trading and the *Salam* occurs only in the six types mentioned in the *Hadith*.

Furthermore, it would be wrong to claim that usury has been forbidden in gold and silver because they are estimated in weight, making the reason of prohibition the fact that they are weighed items. And it would be wrong to say that usury in wheat, barley, dates and salt is forbidden because such items are estimated in volumetric measure, thus making the reason of prohibition the fact that such types of foodstuffs are estimated in volumetric measure, this is wrong because the weight and measure were mentioned in the *Hadith* as a description of those types of foodstuffs and not as a reason. An-Nisai reported on the authority of Ubada Ibn as-Samit that the Messenger of Allah ﷺ said: **"Gold for gold, ore and coins alike, weight for weight, and silver for silver, ore and coins alike, weight for weight, and salt for salt, dates for dates, wheat for wheat, barley for barley, equally and similarly; so he who were to increase or take an increase, he would fall into usury."** The *Hadith* has explained the situation in which prohibition applies, which is the difference of weight in gold and silver, and the difference of volumetric measure in wheat, barley, salt and dates. This shows the way of exchange i.e. the trading takes place, not a reason for the prohibition. Therefore, usury does not occur in every measured or weighed item, but only in the six types mentioned above in weight for gold and silver, and in measure for the others.

As for lending and borrowing (*Qardh*), this is permitted in the six types mentioned and in other types and in any other thing that can be subject to ownership and whose ownership is lawfully transferable. Usury in this case can only occur if it is stipulated for a higher return or a lower return, or if a condition is laid for lower quality than what has been loaned.

Currency Exchange (Sarf)

If we examine the trade contracts of a financial nature that exist in world markets, we would find that purchase and sales transactions occur in six types:

1. The exchange of a currency with the same type of currency, such as the exchange of old Iraqi dinar notes for new notes.

2. The exchange of one currency for another currency, such as the exchange of Egyptian pounds for dollars.

3. The purchase of certain goods with a certain currency and the purchase of that currency with another currency, such as the purchase of aircraft with dollars and the exchange of those dollars for Iraqi dinars in one single deal.

4. The sale of certain goods in sterling and then exchanging them for dollars.

5. The sale of certain bonds with a certain currency.

6. The sale of stocks in a certain company, with a certain currency.

These six transactions are trade contracts of a financial nature. As for the purchase and the sale of bonds and shares, this is categorically forbidden under the *Shari'ah* rules, for the bonds have a determined rate of interest thus usury occurs in them; it is even in itself, a usurious transaction. A stock represents a part ownership in a company that is unlawful in the first instance, thus trading in stock is forbidden, and it is also forbidden to deal in the stock of all the public companies, whether these were companies that deal in lawful trade, such as the industrial and commercial public companies, or companies that deal with unlawful trade such as the banks' stocks. As for the purchase of goods with a certain currency, the exchange of that currency for another, or the sale of certain goods for certain currency and then exchanging that currency for another currency; these represent two transactions, a transaction of purchase and sale and a transaction of exchange. Therefore, they follow the rules of trading and exchange, and they should be subject to the rule of the

separation of the deals.

The sale of one currency for the same or a different currency is a transaction of exchange, and it is permitted. This is because exchange is the swapping of money for money, of gold and silver, either equally in the same type, or differently and equally in the different types. The exchange takes place in the money as it takes place in gold and silver, for the description of gold and silver applies to it in its quality as a currency. Money is not analogous to gold and silver but is one of its forms, for it is based on either of them in their monetary valuation. So if a person were to purchase gold for silver, coin for coin, by saying for instance: "I sold to you this golden *Dinar* for these silver *Dirhams*", by naming them while present at the time of sale, or if he were to purchase gold for silver while not present such as when signing a contract over a described monetary item while not being present, and he says: "I sold to you these Egyptian pounds for ten *Hijazi Dirhams*". These examples are permitted, for the monies are determined in the contracts by naming them, thus the ownership of their assets is established. Therefore, trading gold for silver is permitted, whether this was pounds for *Dirhams*, silver jewellery or for *Niqar* (i.e. silver dust). The *Niqar* is the silver equivalent of *Tibr* (i.e. gold dust). It is also permitted to trade silver for gold, whether jewellery, bullion or gold dust. However, all such trade must be conducted hand to hand and described, either equally or unequally, weight for weight, or known quantity (*Jizaf*) for known quantity, or weight for known quantity in all the mentioned types, provided the exchange is in two different types, for if they were from the same type, they can only be equal and must not be unequal. Gold could be traded for gold, whether this were *Dinar*s, jewellery, bullion, ore, weight for weight, described asset for described asset, hand to hand, and in principle no difference is permitted. Silver could also be traded for silver, be it *Dirhams*, jewellery or *Niqar*, weight for weight, described asset for a described asset, hand to hand, and no difference is allowed in principle. Therefore, the exchange between the same type of currency is permitted, provided that it is equal, hand to hand and a described asset for a described asset. The exchange between two different currencies is also permitted and in this case, the condition of equality and disparity does not apply, but this must be exchanged hand to hand, and a described asset for a described asset. Evidence for the permissibility of exchange is derived from the *Hadith* reported by At-Tirmidhi on the authority of Ubada ibn As-Samit who

said that the Messenger of Allah ﷺ said: **"You may trade gold for silver as you wish, hand to hand."** Muslim also reported on the authority of Ubada ibn as-Samit who said: **"I heard the Messenger of Allah ﷺ forbid the trading of gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, unless this was in equal quantities and described asset for a described asset. He who increases or takes an increase would fall into usury** (Riba)**."** Muslim also reported on the authority of Abu Bakra who said: **"He ﷺ has ordered us to buy gold for silver as we wished, and to buy silver for gold as we wished. A man asked him ﷺ so he said: "Hand to hand". He added: "That is how I heard it."** At-Tirmidhi reported on the authority of Malik Ibn Aws Al-Hadathan who said: **"I came asking who would exchange some Dirhams, whereupon Talha Ibn Ubaydullah as he was sitting with Umar ibn al-Khattab, said: 'Show us your gold,' and then come to us at a later time, when our servant would come we would give you your silver** *(Dirhams)***." Upon this Umar said: "No by Allah, you shall give him his silver coins or return his gold to him, for the Messenger of Allah ﷺ said: 'Exchange of silver for gold has an element of Riba in it unless it is exchanged hand to hand, wheat for wheat is Riba unless it is hand to hand, barley for barley is also Riba unless it is exchanged hand to hand and dates for dates is also Riba unless it is hand to hand.'"** It is therefore forbidden to trade gold for silver except hand to hand, for if the two trading parties parted company before they exchanged hand to hand, the exchange would be unlawful. Bukhari and Abu Dawud reported on the authority of Umar that the Messenger of Allah ﷺ said: **"Exchanging gold for silver is riba except hand to hand."**

It is conditional that the two contracting parties cash in at the place of the deal, for once they separated prior to the cashing in, the sale would not lawfully be considered to have taken place. This is because the exchange is the inter-trading of prices, and to cash in at the place of the deal is a prime condition for the exchange to be valid. Bukhari reported on the authority of Malik Ibn Aws who said: The Messenger of Allah ﷺ said: **"Trading gold for silver is Riba unless it is hand to hand."** At-Tirmidhi also reported that the Messenger of Allah ﷺ said: **"Trade gold for silver as you wish, as long as it is hand to hand."**

The Messenger of Allah ﷺ prohibited the trading of gold for silver in credit, and also prohibited the trading of an absent asset for a present one. Therefore, the exchange must take place at the place of the deal, for if the contracting parties separated before cashing in, the exchange would be invalid due to the non-fulfilment of one of its main conditions. If however, part of the deal was exchanged at the place of the deal, the deal would then be valid in the part which was exchanged and, its equivalent on the recompense and it would be invalid for the remainder of the deal and its equivalent part of the deal. This is because it is permitted to divide the deal into parts. For instance, if a person exchanged one *Dinar* for ten *Dirhams* with a person who has only five *Dirhams*, it would be invalid for them to separate before the full ten *Dirhams* are cashed in. If the five *Dirhams* were cashed in and they separated, the exchange would be invalid for half the *Dinar*s and valid for the other half which is equivalent to the five *Dirhams* that have been cashed in. This is because it is permitted to divide the deal of sale. If the person with the five *Dirhams* borrowed the remainder of the money from the other person or a third party, to complete the deal, the exchange would be valid, as long as the borrowing was not a condition in the deal, for if it was a condition in the deal, the deal would be invalid.

Exchange Transactions

No matter how numerous and varied the transactions of exchange are, they would always be confined to the trading of one currency for another of the same type, or the trading of one currency for another of a different type. The transaction only occurs either between ready cash for other ready cash, or between a *Dhimma* (credit) for another credit. The exchange cannot take place between cash and a credit. When the exchange transaction takes place, it becomes effective once the contracts and the cashing in have taken place, and neither of the two contracting parties can go back on his word, unless it became established that there had been a case of serious fraud or defect, in which case it is permitted for one of the contracting parties to withdraw from the deal. If, for instance one of the contracting parties found a defect in that which he had purchased, for example he found that the silver he had bought contained copper, or that the silver turned black, he has the option to return the goods he had bought or to accept them based on the agreed price at the time of the transaction. This means that the returning of goods is allowed as long as it is at the same rate as the time of the deal. If one of the contracting parties accepted the goods, the transaction would be valid, and if he decided to return them, the deal would be cancelled. If, for instance one bought 24 carat gold for 24 carat gold, only to find that the gold purchased is only 18 carats, this would be considered fraud, and in this case he would have the choice of either accepting the deal at the agreed price of exchange at the time of the transaction or rejecting it. So, if the person who exchanged the gold for gold decided to accept the gold with its defect at a discount, this would not be allowed because there would be a higher value placed on one of the two commodities, and there is an absence of equivalence which is a condition of a deal of the "same type".

Another example would be if an indebted person said to his debtor: "Reduce some of my debt and I will hurry in repaying the remainder of the debt." This is also not allowed because it would be the trading of a ready sale for a future sale without equivalence i.e. it is as if the indebted person sold his debt "promptly" to his debtor for less than the original transaction, thus creating a disparity which is *Riba*. Likewise, if the debtor said to the indebted: "I would give you ten *Dirhams* if you accelerated the repayment of the 100 you owe me", this is not allowed because there would be a disparity in the value which is *Riba*. Muslim reported on the authority of Abu Sa'id Al-Khudri that the Messenger of Allah ﷺ said: **"Trade gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt, like for like, and hand to hand, for whoever increases or takes an increase will fall into riba, for the taker and the giver alike."**

Another example would be if one person owed another gold and the latter owed the former silver, and they exchanged what each owed the other i.e. if the former settled what he owed in gold with what he is owed in silver, this type of exchange would be lawful, for the immediate payment of debt is like the immediate payment of goods. Also, if a person bought goods in gold, and the seller cashed the value of the goods in silver, this type of transaction would be permitted, for it would be permitted to pay off one of the currencies by another currency, and this deal would be an exchange with an asset and debt (credit). This is because Abu Dawud and Al-Athram reported in their "*Sunan*" on the

authority of Ibn Umar who said: **"I used to trade in camels in the Baqee', so I would sell in Dinars and get paid in Dirhams, or sell in Dirhams and get paid in Dinars. I would take this from that and give this from that, so I went to the Messenger of Allah ﷺ at Hafsa's house, and I said: 'O Messenger of Allah ﷺ will you please listen, I want to ask you something. I sell camels in the Baqee', I sell in Dinars and get paid in Dirhams or I sell them in Dirhams and get paid in Dinars. I take this from that and give this from that.' The Messenger of Allah ﷺ answered: 'There is nothing wrong in this as long as you trade according to the market value of the day and as long as you do not part company from the other party with something still outstanding between the two of you.'"**

Also, if a person bought from another a genuine *Dinar* for two fake *Dinar*s, this would not be allowed. However, if he bought a genuine *Dinar* for silver *Dirhams*, then bought with the *Dirhams* two fake *Dinar*s, this would be allowed whether he bought them from the same person or from another. This is so because Muslim reported on the authority of Abu Sa'id who said: **"Bilal came to the Messenger of Allah ﷺ with some Barni (fine quality) dates, so the Messenger of Allah ﷺ enquired: 'Where did this come from?' Bilal replied: 'These are dates of inferior quality we had for some time, and I exchanged two sa'as of inferior quality for one sa'a of fine quality as food for the Messenger of Allah ﷺ.'" Upon this the Messenger of Allah ﷺ said: "Woe! this is real Riba so do not do that. If you wish to buy dates (of superior quality) you could sell the dates (of inferior quality) in a separate bargain and then buy the (superior quality dates)."** Also, Abu Sa'id and Abu Hurairah reported in an "agreed upon" *Hadith* **"that the Messenger of Allah ﷺ appointed a man as a tax collector over Khaybar, so he came to him one day with some fine quality dates called Janeeb. Upon this the Messenger of Allah ﷺ said: 'Are all the dates of Khaybar like this?' He said: 'No, by Allah, O Messenger of Allah! We buy one Sa'a of these fine quality dates for two Sa'as of inferior dates and also two Sa'as of it for three Sa'as.'" Upon this the Messenger of Allah ﷺ said: "Do not do this; rather sell the inferior quality of dates you have for dirhams and then buy the Janeeb dates with the use of dirhams."**

Here, the Messenger of Allah ﷺ did not order the man to sell his dates to a person other than the one he would buy them from, and if the

selling of dates to the same person he buys from was *Haram* then the Messenger of Allah ﷺ would have explained this to his tax collector. It was therefore permitted because he sold one type of good (dates) for another type (dates) without any preconditions or secret agreement (connivance) so it is allowed, as if he had bought from another person. Likewise, it would be permitted to sell gold for silver, and then buy silver. However, if this were subject to a prior arrangement and secret deals, it would not be allowed, and it would be regarded as a prohibited ploy. This is because any type of trickery is prohibited and unlawful in Islam i.e. any attempt to portray a contract as legitimate with the intent to commit a forbidden act using deception. This includes soliciting an action that Allah ﷻ has forbidden, neglecting an action that Allah ﷻ has commanded, suppressing a right etc. This is because whatever leads to *Haram* is itself *Haram*, and because Ahmed reported on the authority of Ubada Ibn As-Samit that the Messenger of Allah ﷺ said: **"A group from my ummah will one day consider "khamr" (intoxicants) lawful after they give it a different name."** Ahmed also reported on the authority of Abu Malik Al-Ashja'i who said **that he heard the Messenger of Allah ﷺ say: "People from my ummah will drink alcohol (Khamr) while giving it a different name."**

Therefore, exchange is one of the lawful transactions in Islam according to specific rules determined by the *Shar'a*. It can be conducted in local transactions as well as foreign. Just like the exchange of gold for silver and silver for gold of the same currency of the country, this can also be performed in a foreign currency, whether at home or abroad, and whether the exchanges were monetary or commercial as well as where the exchange of a currency for another is involved. In order to elaborate on the foreign exchange between various currencies, we need to study in depth the nature of money.

24
Money (An-Nuqood)

Money is the standard by which we measure the benefit found in the commodity and in the effort i.e. goods and services. Therefore, money is defined as being the medium by which all goods and services are measured. Hence the price of a commodity and the wage of a worker for instance, each represents the society's estimate of the value of that commodity and the effort of that worker. Bonds, shares and the like are not considered money.

This estimation of the value of goods and services is, in all countries, expressed by units. These units become the measure by which the benefit obtained from a commodity and the benefit obtained from a service is measured. These units would act as a medium of exchange, and these units are money.

When Islam decreed the rules of trading and hiring, it did not determine any specific item with which the exchange of goods, services and benefits had to be compulsorily conducted. Islam has rather given the human being the choice to conduct the transactions of exchange with whatever medium he chooses, as long as mutual consent prevailed in the exchange. It is, therefore permitted for a man to marry a woman by teaching her the Qur'an, just as it is permitted for a person to buy a commodity by working for its owner for a day, or to work for someone for a day in exchange for a certain amount of dates etc. The exchange could therefore be conducted with whatever people wished. However, when it comes to exchanging a commodity with a specific monetary unit, Islam has guided us to the monetary unit by which the exchange is to take place. It has restricted the Muslims to a specific type of money, which is gold and silver. Islam has not left it to society to express its own estimation of the measure of benefit drawn out of goods or services, by either fixed or variable monetary units, which society could manage as it

wished. Islam has rather specified these monetary units by which society expresses the values i.e. the prices of goods and services.

This specification could be deduced from several matters and these are as follows:

1. When Islam prohibited the hoarding of wealth, it specifically prohibited the hoarding of gold and silver despite the fact that wealth includes any property that can be owned. Wheat for instance is a type of wealth, so are dates and money. However, hoarding is reflected in money, not in the goods and services. The prohibition in the verse refers to the hoarding of money, for it acts as the generally accepted medium of exchange, and because the hoarding of money is the matter that produces the effect of the prohibition i.e. restricting circulation. As for other commodities, their accumulation would not be known as *Kanz*, (hoarding), but as *Ihtikar* (monopoly). Hence the verse which prohibits the hoarding of gold and silver in fact refers to the hoarding of money. The verse has specified the money which Allah ﷻ has prohibited us to hoard which is gold and silver. Allah ﷻ says:

وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلا يُنفِقُونَهَا فِي سَبِيلِ اللَّهِ
فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ

"And those who hoard gold and silver and do not spend them in the way of Allah, let them know that a severe punishment is awaiting them" [At-Tauba: 34]

Therefore, prohibition is focused upon the monetary medium of exchange, thus the hoarding of gold and silver is forbidden, whether it was minted or not.

2. Islam has linked gold and silver to a set of fixed rules. Hence, when it imposed the *Diyyah* i.e. blood money, it specified a fixed amount of gold. Also, when it decreed the penalty of cutting the hand of the thief, it specified the minimum value of gold that is stolen which would entail the cutting of the hand. In his letter to the people of the Yemen, the Messenger of Allah ﷺ was reported by An-Nisai on the authority of Amru Ibn Hazm to have said: **"The blood money for one soul would**

be 100 camels...and for those who deal in gold it would be 1000 dinars." Bukhari also reported on the authority of Aisha (ra) **that the Messenger of Allah ﷺ also said: "The hand is cut for the theft of one-quarter dinar and upward."** Therefore, this fixing of certain rules by the *Dinar*, the dirham and the *Mithqal*, would make the *Dinar* with its weight in gold, and the dirham with its weight in silver, a monetary unit by which the values of goods and services are measured. This monetary unit would be the money, which is the basis of the currency. Therefore, the fact that Islam has linked the *Shari'ah* rules to gold and silver by text, when these rules are related to money, serves as evidence that the currency is solely restricted to gold and silver.

3. The Messenger of Allah ﷺ has determined that gold and silver be used as money, and exclusively made them the monetary measure to evaluate goods and services, and ensured that all transactions be conducted with them as their basis. He ﷺ also established the units of this money, which are the ounce, *Dirham*, *Daniq* (equal to 1/6 *Dirham*), Carat, *Mithqal* and *Dinar*. These units were well known and widespread during the lifetime of the Messenger of Allah ﷺ and they were widely used by all people. It has also been established that the Messenger of Allah ﷺ approved of them. All trade and marriage transactions were conducted in gold and silver, in their quality as money, and this has been established in the *Sahih Ahadith*. The Messenger of Allah ﷺ has determined the weight of gold and silver with a specific weight, which was the weight of the people of Makkah. Abu Dawud and An-Nisai reported on the authority of Ibn Umar that the Messenger of Allah ﷺ said: **"The weight should be that of the people of Makkah."** When reviewing the monetary weights in Islam, we would conclude that the legal ounce would equal 40 *Dirhams*, the dirham would be 6 *Daniqs*, the *Dinar* would equal 24 Carats and every 10 *Dirhams* would equal 7 *Mithqals*. The weights of Madinah were established according to this order.

4. When Allah ﷻ decreed the *Zakat* of money, He ﷻ made it obligatory in gold and silver, and He ﷻ determined a *Nisab* for the *Zakat* in gold and silver. Therefore, to consider the *Zakat* of money as being gold and silver would establish the money as being gold and silver.

5. The rules of exchange listed under the monetary transactions only, have come in gold and silver alone. Also, all the financial transactions

mentioned in Islam were reported to have been conducted in gold and silver. Exchange is the trading of one currency for another. It would be either trading of one currency with the same type, or trading of one currency for another type. In other words, exchange would be the swapping of one currency for another. The fact that *Shar'a* has determined the exchange, which is purely a financial transaction, linked to nothing else but money by gold and silver serves as a clear evidence that money should be in gold and silver and nothing else. At-Tirmidhi reported that the Messenger of Allah ﷺ said: **"Trade gold for silver as you wish, but hand to hand (without delay)."** Bukhari also reported that the Messenger of Allah ﷺ said: **"Gold for silver would be Riba, unless it was hand to hand (without delay)."**

Therefore, money is considered one of the issues which Islam has laid down rules for and is not an issue subject to opinion and consultation, nor subject to the requirements of economic and financial life. The attribute of money as a specific type and unit of currency, is rather determined by a *Shari'ah* rule. If one were to ponder over the above mentioned five points, one would find a host of Shariah rules has been related and linked to the money in Islam. Therefore, the prohibition of its hoarding, the obligation of *Zakat* on it, the decreeing of the rule of exchange for it, the approval of the Messenger of Allah ﷺ of dealing with it, the linking of the *Diyyah* (blood money) and the cutting of the hand in theft to it makes the opinion in such a matter subject to the *Shari'ah* text only. The fact that *Shar'a* has expressed through rules which are related exclusively to money in gold and silver, or are linked to it, serves as a clear evidence that the currency should be gold and silver, or based on gold and silver. Therefore, the type of currency determined by the *Shari'ah* rules must be adhered to. Thus, money in Islam should be gold and silver.

However, to exclusively determine gold and silver as money would not necessarily mean that it would be forbidden to conduct any exchange in other than gold and silver. The issue of currency in this regard would be other than that of exchange, it would rather be the issue of adopting a currency. Therefore, despite the fact that it would be permitted for people to exchange in anything they wished, the monetary measure for exchange and for anything other than exchange must be in gold and silver, for money in Islam is gold and silver.

The Messenger of Allah ﷺ made various types of gold and silver as

money, regardless of whether these were minted or not. He ﷺ did not mint a specific money, with specific and fixed features, rather the units of gold and silver were Roman and Persian coins, both small and large coins along with silver coins which were neither minted nor engraved, as well as Yemeni coins. All of these coins were in use widely without exception. However, these coins were not considered by their number or whether they were engraved or not; they were only considered according to their weight. The piece of gold could be the size of an egg, and people would still deal with it. Thus, the definiition was by specifying gold and silver and specifying the weight for each of them. Therefore, the rights of Allah ﷻ such as *Zakat*, the rights of the people such as debts, as well as the prices of goods and services, were related to *Dirhams* and *Dinar*s i.e. to gold and silver, evaluated by weight.

This State of affairs continued throughout the lifetime of the Messenger of Allah ﷺ, that of the four Khulafaa Al-Rashideen, and the beginning of the era of Bani Umayyah, until the arrival of Abdulmalik Ibn Marwan, who deemed it appropriate to transform all the gold and silver that was in use at the time, minted and non minted alike, into an Islamic coinage and inscription, and gave it a standard and invariable weight, thus doing away with the need to make reference to their weight. So, he collected the largest and the smallest of coins and minted them according to the weight of Makkah. Abdulmalik minted the *Dirhams* in silver and the *Dinar*s in gold in the year 75 AH, and ever since that time, Islamic minted *Dirhams* and *Dinar*s were in circulation i.e. the currency of the Islamic State became distinguished, having the same invariable feature. Therefore, the basis of the monetary standard in Islam was gold and silver. As for size, coinage, form and inscription, these are all part of the style. Therefore, the words of gold and silver, when mentioned in the *Shari'ah* terminology and evaluation, would apply to two matters: The money which is in circulation, whether it is copper or paper money as long as it has an equivalent (from gold and silver), and the two metals of gold and silver. Any money that is from gold or silver, would thus be considered, and any paper or copper money or the like, which could be transferred into gold or silver would also be considered.

The Gold Standard

A State would be following the gold standard if it used gold currency in its foreign and domestic transactions, or if it used domestically a paper money which could be exchanged for gold. This paper money could either be for domestic use and for making payments abroad or solely for making payments abroad, on condition that this exchange for has a fixed price. In other words, it would still be following the gold standard on condition that the paper unit can be exchanged for a specific quantity of gold, at a fixed price and vice-versa. It would be natural in this case for the value of the currency in the country to remain solidly linked to the value of gold. Therefore, if the value of gold rose in comparison with other commodities, the value of the currency in comparison with other commodities would rise as well. If the value of goods decreased in comparison with commodities, the value of the currency would also decrease.

Money based on gold has a special characteristic, reflected in the fact that the monetary unit is linked to gold in a specific amount. In other words it would, by law, consist of a specific weight of gold. The import and export of gold would be freely conducted, and people would be able to freely acquire currencies, gold bullion, or gold dust and be able to export them.

Since gold in this instance would move freely between various countries, every person has the choice of either buying foreign currency, or transferring (i.e. settling in) gold; a person would however opt for the cheaper method. Therefore, since gold and the cost of its transfer would cost more than the price of the foreign currencies in the market, it would then be sensible to use foreign currency instead. However, if the exchange rate exceed that figure, it would be best to take the gold out of circulation and settle with it.

Benefits of the Gold Standard

If the benefits of the gold standard were to be compared with the fiat (paper currency) standard and other standards, it would be inevitable that the monetary gold standard would become a global standard. These

benefits would not allow any other monetary standard to become established. Throughout the history of money and up until the First World War, the whole world operated the gold and silver standards. No other standards were known to the world until then. However, when the colonialists mastered the various styles of economic and financial imperialism, and began using currency as a means of colonialism, they established different monetary standards. They considered bank deposits and non exchangeable banknotes, which had no reserve of gold or silver, as money, along with gold and silver. Therefore, it is necessary to explain the benefits of the gold standard, the most important of which are:

1. The gold basis necessitates the free circulation, import and export of gold, which leads to monetary, financial and economic stability. In this case, transactions of exchange would only originate from foreign payments to meet the cost of commodities and the salaries of workers.

2. The gold standard ensures the stability of exchange rates between various countries, and the stability of the exchange rates in turn leads to a boom in international trade, for traders would no longer fear the expansion of foreign trade, and the uncertainty of exchange rate instability.

3. If the gold standard was employed, central banks and governments would not be able to expand the issuance of banknotes, for as long as the banknote remains non exchangeable with gold at a fixed rate, the authorities concerned would fear that if they exceeded limits in issuing banknotes, the demand for gold would increase and they would not be able to meet this demand. Therefore, they would always tend to maintain a reasonable ratio between what they issue in terms of banknotes and gold reserves.

4. Each of the currencies used, all over the world would be fixed by a specific amount of gold. As a result, the movements of commodities, money and people from one country to another would be easier, and the problems of hard currency would disappear.

5. The gold standard would help each country preserve her gold, for there would be no gold smuggling from one country to another, and countries would not need to exercise control in order to protect their

wealth, for gold would only leave the country for legitimate reasons i.e. as prices for commodities or salaries for workers.

These are some of the benefits of the gold standard, and they all make it necessary that the world operates this standard. Therefore, it comes as no surprise to learn that the whole world up until the First World War was indeed operating the gold standard.

At the start of the first world war, the most prevailing monetary system in the world was that based on the gold standard, and money in circulation at the time was in fact gold coins and paper money readily exchangeable for their equivalent value in gold. The silver standard also operated alongside the gold standard. The implementation of this standard led to the establishment of the most productive economic relations. However, when the First World War was declared in 1914, the warring countries undertook certain measures which led to disorder in the gold standard. Some countries cancelled the liability of exchanging their currencies to gold. Other countries imposed harsh restrictions on the export of gold, while others put obstacles in the face of importing it. This continued until 1971 when America declared that she had put an end to the operation of the gold standard and that she intended to sever the link between gold and the dollar. Since then, gold has had no relation with the currency, but rather has become like any other commodity. America's intention was to establish the dollar as the monetary basis world-wide so that it could control and dominate the international money market. Therefore, the gold standard no longer operated throughout the world and this disturbed the monetary system and the rates of exchange fluctuated. Since then, obstacles and difficulties in the transfer of currencies, goods and services have appeared.

Problems facing the Gold Standard

When the gold standard was applied throughout the whole world, it did not experience any problems. However, problems arose when the superpowers opted to fight their enemies using money, by introducing alongside the gold standard the non exchangeable (compulsory) paper money standard. For this reason, Western colonial powers established the International Monetary Fund, and the USA introduced the U.S. dollar

as the basis for the new monetary standard. Hence, any State operating the gold standard would be faced by certain problems which need study in order to solve and overcome them. These problems are as follows:

1. The concentration of gold in countries whose level of production, their ability to compete in foreign trade and the professionalism of their scientists, experts and industrialists have all increased. This would lead to the flow of gold into these countries either as a price for commodities or as salaries for the workforce i.e. experts, scientists and industrialists. Therefore, most of the existing reserves of gold world-wide would accumulate in these countries, causing an imbalance in the distribution of gold among various countries. This would also lead to countries restricting the transfer of gold for fear of losing their reserves, thus bringing their foreign trade to a grinding halt.

2. Gold could flow into some countries due to the balance of trade being in their favour. However, these countries could prevent this gold from influencing the local market and from causing an increase in the level of prices by flooding the market with a large number of bonds. This could be sufficient to lead to a withdrawal of money equal to the gold they had received, thus such countries end up retaining the gold and preventing it from returning to the country of origin, which would suffer from the use of the gold standard as a result.

3. The widespread use of the gold standard has always been linked to the concept of international specialisation in various areas of production and to international free trade. However, a powerful tendency toward the protection of industry and agriculture in these countries has emerged, which has led to the introduction of tariff barriers, thus erecting an obstacle in the face of goods exported to these countries and making it difficult for the transferring of gold out of these countries. Therefore, the trade of the country that operates the gold standard would suffer, for if her goods did not reach other countries' markets at the normal price, she would either be forced to reduce the level of her commodities' prices further in order to overcome the tariffs and quotas or not export her goods in the first instance, and in both cases, her trade would suffer.

These are the main difficulties which the gold standard could face if operated by a single country or several countries. The way to overcome

such difficulties would be to adopt a policy of self-sufficiency and to make workers' salaries performance-related rather than estimated in relation to the price of the commodities they produce or manufacture, or their standard of living. Also no consideration should be paid to shares and government bonds as commodities owned by individuals, and there should be no over-reliance on exports as a source of developing wealth. A country should rather aim at generating her wealth within her own boundaries without having to export her goods and services abroad, which would help her do away with trade barriers imposed by other countries. Once a country adopts such a policy, she would have nothing to fear from the gold standard, and instead would reap all its benefits, avoid all its disadvantages and not suffer any setback from it at all. On the contrary, it would be in her interest. So it is inevitable for her to follow the gold and silver standard to the exclusion of all other standards.

The Silver Standard

When we talk about the silver standard (or the silver basis), what is meant is that silver forms the basis of the monetary unit, enjoys the freedom of coinage and is an unrestricted legal tender. This standard was well known in the past and was operating in the Islamic State alongside the gold standard. Some countries operated it as their main and only monetary standard. The silver standard continued to be operated in Indo-China until 1930 when the silver piaster was replaced with a golden one.

The silver standard is just like the gold standard in all its details. Therefore, operating the gold standard alongside the silver standard in the one State is a simple matter. The Islamic State operated the standards of gold and silver together since the Messenger of Allah ﷺ emigrated to Madinah. This monetary policy should continue to be based on both the gold and the silver standard i.e. money should be in gold and silver, whether the circulation of this money is in real gold and silver or in banknotes backed by reserves of gold and silver wherever these notes are circulated.

Metallic money

Economists divide the types of metallic currencies in to two main types: the single metallic standard and the dual metallic standard. The first is where the main currencies are restricted to one single metallic coinage. As for the latter i.e. the dual standard, both the gold and silver coins represent the main currency.

The dual metallic standard requires the existence of three qualities:
1. Gold coins must have an unrestricted legal tender (no fixed purchasing power).
2. There should be no restrictions on minting from the bullion of both metals.
3. An official rate between the values of the gold and silver coins must be established.

The dual metallic standard is characterised by the huge amount of money it puts into circulation, due to the simultaneous use of the metallic coins as main currencies. Therefore, prices remain high and this would lead to an increase in production. This would also make the value of money more stable and prices would be less likely to undergo major fluctuations which usually leads to economic unrest. It is therefore clear that operating a dual metallic standard is better than the single metallic standard.

Paper Money

Paper money consists of three types, these are:

1. Intrinsic paper money: These are bank notes representing a certain amount of gold and silver, either coined or in bullion, deposited in a specific place, which have a metallic value equal to the nominal value held by these notes, and can be exchanged on request. In such a case, the circulation in real terms is like that of metallic money, with the paper money circulating as a substitute for metallic money.

2. Fiduciary paper money: These are "convertible" notes where the undersigned promises to pay the bearer on demand a certain sum of

metallic money. The value of these fiduciary notes when put in circulation, would be subject to the trust, people at large, have in the undersigned, and on the ability of the undersigned to fulfil the promise. If he were trustworthy and reliable then it would be easy to use this fiduciary paper money just like coins.

The main type of this money is the bank notes issued by well-known banks and trusted by the public. However, the issuer of these bank notes i.e. this fiduciary paper money, be it a bank or the State's treasury, maintains an exact amount of gold equal to the value of the bank notes, as is the case with the intrinsic paper money. It usually maintains gold reserves in its vaults equal to a certain percentage of the issued bank notes value which could amount to three quarters, two thirds, a third, or a specific percentage. Therefore, the quantity of bank notes which is backed by an exactly equal value of metallic reserves is considered intrinsic paper money, whereas the rest of the quantity which is not backed by a reserve would be considered fiduciary paper money, which derives its power of circulation from the trust which people have in the undersigned. For instance, if an issuing house, be it a bank or government treasury, would keep a metallic reserve in its vaults worth 20 million *Dinar*s, and issues paper money worth 40 million *Dinar*s, then the 20 million of bank notes i.e. paper money which is not backed by a metallic reserve would be considered fiduciary paper money and the twenty million *Dinar*s worth of paper money, which is backed by a metallic reserve, equal to its value, would be considered as intrinsic paper money.

Therefore, for the State that holds reserves of gold and silver exactly equal to the value of the paper money it issues, its money would be considered as intrinsic paper money and fully backed money. Whereas, for the State that holds a value of either gold or silver which is not equal to the full amount of paper money, but is only partially covered, its money would be considered as fiduciary paper money.

3. Inconvertible paper money: These are known as compulsory bills i.e. legal tender with enforced acceptability, and are also commonly called paper securities. They are issued by governments and established as main currencies. They cannot be exchanged to gold or silver, nor are they backed by a reserve of gold, silver or bank notes. However, they are backed by government legislation exempting the issuing house from their exchange against gold or silver.

Issuing of Currency

The price is the society's estimate of the value of goods and the wage is the society's estimate of the value of services. Money is the medium by which this estimate is expressed. It is the medium which enables us to measure various goods and services and refer them to one common basis, thus facilitating the process of making a comparison between various goods and between various services by referring them to one general unit which serves as the general standard. Prices are paid for goods and wages are paid for workers on the basis of this unit.

The value of money is estimated by its purchasing power i.e. by how much a person could acquire with it in terms of goods or services. Therefore, the medium by which the society estimates the value of goods and services must have a purchasing power in order to qualify as money i.e. a power with which any person could acquire goods and services.

This medium must originally have an intrinsic power, or be dependent on an intrinsic power i.e. it should itself have a value recognised by the public, in order to be considered as money. However, in reality the issuing of money differs among the various countries of the world. Some countries have made their money an intrinsic power or dependent on an intrinsic power, while others have made their money a conventional money (inconvertible) i.e. they have agreed upon a medium to be considered as money and they gave it a buying power.

When issuing money, countries may either adopt the gold and silver standard, or the non-exchangeable paper money. As for the countries which operate the gold and silver standard, they follow two methods of issuing: the metallic money method, i.e. either the single/dual metallic standard or the paper money method. The metallic method is where gold and silver coins are issued by minting pieces of gold or silver to represent various values, but based on one monetary unit to which all the various values of money and goods would be referred. Each piece would be coined to be based on this unit, and these pieces would be circulated as the country's currency. The paper method used in the countries which operate the gold and silver standard means simply that a country would use paper money i.e. paper currency that can be exchanged to gold and silver upon demand. Two methods can be used in operating such a

standard; the first method is when a country makes the paper money represent a certain amount of gold and silver deposited in a specific place as money or bullion. In this case, this amount would have a metallic value equal to the nominal value which the paper money holds and the notes can be exchanged on demand. This is known as intrinsic paper money. As for the second way, this would be used when a country decides that the paper money should represent a document in which the undersigned, promises to pay the bearer on demand a certain amount of money. This paper money would not in this case represent the amount of gold and silver which has a metallic value equal to the issued nominal value; the issuing house, be it a bank or a government treasury, would however maintain a lesser amount of gold and silver than its nominal value, for example, three-quarters of the value, two thirds, one third, a quarter or any other percentage of the nominal value. For instance, a bank or the State's treasury would issue paper money worth 500 million *Dinar*s and maintain in its safes 200 million *Dinar*s worth of gold and silver only. This type of paper money is known as fiduciary paper money. The metallic reserves are known as gold reserves or gold cover. In any case, a country which issues money under these conditions would in fact be operating the gold standard.

This demonstrates that the media which possess an intrinsic power i.e. gold and silver, are in themselves money and are the basis upon which money is based. However each country chooses her own specific method, shape, weight, mint, etc. so that she can distinguish it from other money. A country may also agree on an intrinsic paper currency based on gold and silver either circulating in the country and abroad, or used only in foreign exchanges. A country could also agree upon fiduciary paper money, backed by gold for a certain amount of its nominal value i.e. it would have a gold reserve less than its value in gold. These papers would have a specific shape and print so that they become the currency of the issuing country and so that they are distinguished from other currencies.

As for the countries who operate a non-exchangeable paper money standard, they issue bills which are not exchangeable to gold or silver or any precious metal with a fixed rate. Therefore, the institution which issues these bills is not liable to exchange these bank notes for gold at a specific price on demand. Gold in such countries is treated just like any other commodity whose price fluctuates from time to time according to

supply and demand. These bank notes are not backed by a metallic reserve, nor are they exchangeable to metallic money. They only hold a legal value and do not possess an intrinsic power, nor do they depend on an intrinsic power. They merely represent a unit that has been agreed upon as a means of circulation, and it is the law that gives it the power to become a means of circulation, with which a person may acquire goods and services. Its power is derived from the power of the State who issues it and who uses it as her currency.

Since money is issued in the above mentioned ways, any country could therefore agree upon something which expresses the society's estimate of goods and services, as long as this thing has purchasing power with which a person could acquire goods and services from that country. Therefore, any country could issue a currency that has a fixed and a distinguished quality, which expresses the society's estimation of the value of goods and services i.e. a money with which any person could acquire goods and services in the issuing country, according to the value given to that money. It is the issuing country which forces other countries to recognise her currency so that these countries could acquire from her goods and services.

A country would not need to depend on the International Monetary Fund, the World Bank, a central bank or any other institution. The strength of the unit in obtaining goods and services would be sufficient to turn it into a currency either by itself, such as gold and silver, or by its dependence on gold and silver e.g. intrinsic paper money which represents its nominal value in gold and silver, or through having a certain amount of gold and silver held in reserve, as is the case with fiduciary paper money. This may also be due to it being a legal tender with enforced acceptability which allows a person to acquire with it goods and services, such as the non-exchangeable paper money i.e. the banknote.

Countries in the past used to deal in gold and silver, whereby each country would agree upon a specific fixed character for her gold and silver in order to distinguish her money from other countries' money. Each country would then issue alongside the gold and silver paper money with a fixed distinguished character. Then the country would agree upon the issuing of paper money while maintaining gold and silver reserves.

There was therefore three types of money in the world: metallic money made of gold and silver, intrinsic paper money and non-exchangeable banknotes.

Since the end of the Second World War and until 1971, the whole world used to operate two main types of money, the metallic and the paper money with its three types. However, since 1971 the whole world began operating exclusively the non-exchangeable paper money standard i.e. the legal tender with enforced acceptability, until the U.S. president Nixon declared the Bretton Woods Declaration null and void, thus severing the link between the dollar and gold.

Exchange Rate of Currencies

Exchange is the conversion of one currency for another i.e. the interchange of one currency with another. This would be either exchanging one currency for another of the same type, such as the exchange of gold for gold, and silver for silver, or the exchange of one currency for another of a different type, such as the exchange of gold for silver or vice versa. As for the exchange of one currency for another currency of the same type, this necessitates equality between the two types and differences are absolutely prohibited, since this would be *Riba* which is forbidden, such as the exchange of gold for gold, or the exchange of intrinsic paper money – which can be exchanged for its value in gold for gold. Therefore, the exchange rate does not apply in this case.

As for the exchange of one type of money or one currency for another of a different type, such as the exchange of gold for silver, or the exchange of pounds sterling for the U.S. dollar or the exchange of a ruble for a franc, this is permitted, provided the exchange takes place on the spot. The exchange rate would be the rate of one currency in ratio to the other, in other words the exchange rate would be the ratio of exchange between two different currencies.

What prompts people to exchange is the need of one of the exchanging parties for the currency of the other party. As for the exchange taking place between people in the currency circulating in one

particular country, such as the exchange of silver for gold, or gold for silver, this is straightforward and would be between gold and silver, because the country would be operating both the gold and the silver standard and the exchange rate would be fixed between the two currencies, according to the market rate. There would be no harm if the exchange rate fluctuated between the two types of currency used in one country, because this would be just like the fluctuation in the commodities' prices.

As for the exchange between two different currencies of two countries or more, this is regarded as a source of problems. It would therefore be appropriate to investigate its reality and clarify the *Shari'ah* rule regarding it and regarding the exchange rate as such.

As for its reality, this is reflected in the fact that countries operate different standards and the position of countries who operate the gold standard differs from those who operate the non-exchangeable paper money standard. Therefore, when several countries operate the gold standard, the exchange rate between these countries or the ratio of exchange between their currencies would consequently remain almost stable. This would be so if they were operating the metallic standard, because in fact, one would not in this case be exchanging two different currencies where the value of each one of them may alter with regard to the other in accordance with the level of supply and demand related to each of them. Instead, one would be exchanging gold for gold, and the only difference would be the fact that gold in one country has been coined in a different shape and stamped with a symbol different to that used in the other country. The exchange rate would then be determined by the ratio between the weight of the net gold to be found in the currency of one country and the net weight of gold to be found in the currency of the other country. The exchange rate between the countries who operate the gold standard would only fluctuate within two specific margins which would be dependent on the transfer charges of gold between them. This is known as the gold limits (*Haddi Dhahabiyy*). Since these charges are minimal, we can say that the exchange rate between countries operating the gold standard is virtually stable. Furthermore, if a country operated the intrinsic paper money standard, it would be in exactly the same position as a country that operates the metallic standard, because the real circulation taking place is that of the metallic money. The

only difference would be that the metallic money itself circulates, whereas paper money circulates in lieu of it, for it acts as representative to it. Therefore, the intrinsic paper money would be dealt with in exactly the same way as far as the exchange rate is concerned. In fact the rule of intrinsic paper would in all aspects be the same as metallic money.

However, if a country operated fiduciary paper money i.e. banknotes, the gold in this case would only be covering some of the fiduciary money's value and not all of its value, even though the country would be operating the gold standard. Therefore, the value of the fiduciary paper money would differ according to the gold reserves covering it, and this would determine the exchange rate between them. This exchange rate would however remain stable and easy to monitor, for it would depend on the percentage rate of gold reserves whose quantities would be defined.

However, if a host of countries were to operate the non-exchangeable paper money standard, the issue of fixing the exchange rate between these countries would then arise. This is because when the exchange of currency to gold at a fixed price becomes impossible, then the problem facing these countries operating the non-exchangeable paper money standard is the way to fix the exchange rate between them.

Solving this problem lies in the fact that the various types of paper money are considered commodities which are exchangeable in the international money market. They in fact do not buy these notes for their own worth, but for their ability to purchase other commodities in their countries of origin. Therefore, the ratio between two paper currencies, or the exchange rate between them, would be determined according to the purchasing power of each paper money in its respective country of origin.

Therefore, the exchange rate would be determined by the ratio between two currencies. If for instance Egypt and Italy were operating the paper money standard, and the Italian lira would purchase in Italy 10 units of commodities, whereas the Egyptian pound would purchase in Egypt 100 units of commodities, the ratio between these two currencies would be 1 Egyptian pound for 10 Italian liras. However, the exchange rate could fluctuate because the paper currencies are in fact commodities which

people exchange and trade in the international money market; they do not buy them for their own worth, but for their ability to purchase goods and services from the countries which issued them. Their value would therefore increase when the prices of commodities decrease in their respective countries of origin, and decrease when those prices increase. Therefore, the benefit that one makes from a foreign currency depends on its purchasing power. If this power increases the benefit we gain, our willingness to pay more with our own currency in order to obtain an equivalent amount of that foreign currency would also increase. On the other hand, if the purchasing power diminishes then the benefit obtained from that currency would also diminish, and our willingness to pay more with our own currency in order to obtain an equivalent amount of that foreign currency would also diminish. This is because that foreign currency could no longer purchase in its country of origin the same units of commodities it used to, while our currency would still maintain its value.

Let us suppose that in a specific year, the level of prices in Egypt and England were 100 in both countries, and that the exchange rate between them was 1.00 Egyptian pound for £1.00 sterling. In this case the exchange rate would be equal, and since the incentive to exchange is to achieve a sufficiency in the need for English goods, therefore, no great demand for, nor turning away from pounds sterling would occur in Egypt. However, if the price level were to rise in Egypt to 200, the pound sterling value would double in Egypt, and the exchange rate would become 1 Egyptian pound for £0.50 sterling. Therefore, a demand for sterling pounds would be generated due to the relative price decrease in England whereas, the demand for the Egyptian pound would diminish due to the relative price increase in Egypt. This would entail a decrease in the demand for the Egyptian pound by the English, and their demand for Egyptian goods would decrease, and they would inevitably prefer their own goods with their present prices because the prices of Egyptian goods would have doubled while their own prices remained the same. Therefore, the exchange rate would change according to changes in the commodity prices of the country which had issued the currency. If the price level in one country rises as far as another country is concerned, due for instance to the increases in money supply, the exchange rate between these two countries would inevitably change, leading to a decrease in the foreign value of the country in which the prices had risen.

The exchange rates between the currency of one country and foreign currencies would be in line with the relationship established between the other foreign currencies' exchange rates themselves. In other words, if for instance the Iraqi *Dinar* equalled 100 Iranian riyal, 200 Italian liras or 400 French francs, the exchange rates between the foreign currencies would therefore be, in Iran, 1 Iranian riyal for 2 Italian liras or 4 French francs, and in Italy it would be 1 Italian lira for 2 French francs or 0.5 Iranian riyal and so on. This is in fact what would happen if every country left the foreign value of her currency to fluctuate according to the fluctuation of price levels, without imposing heavy restrictions upon international trade and upon the transfer of foreign currency into local currency or local into foreign currency. However, a country may attempt to sustain the foreign value of her currency despite high prices at home, by restricting the local importers' demand for foreign goods by reducing the number of import licences, for instance. In such a case, the harmony between the various exchange rates in the various countries would be disturbed. This difference between the exchange rates in different countries could not occur unless some countries opted to impose restrictions on their foreign currency transactions. Because if there were no restrictions, a businessman would be able to exchange the currency and make a profit. Thus other people would rush to seize this business opportunity and do the same, which would in turn lead to the establishment of harmony between the various exchange rates once again.

These restrictions imposed upon exchange transactions have become a widespread phenomenon in many countries in wartime and at times of severe economic unrest. We find that at such times, the value of the local currency in a country who subjects her monetary transactions to such restrictions would vary from one country to another according to the monetary system applied in each country. Therefore, in a country where the uniform exchange rate is applied, the official exchange rate between the currency of such a country and the country mentioned earlier would remain stable, for the currency would be purchased by the central bank and the banks which are licensed to undertake foreign currencies transactions at a fixed rate and sell these currencies at a fixed price.

For countries who operate the uniform exchange rate system and whose central banks do not undertake to buy or sell foreign currencies at a specific price, the prices of foreign currencies would fluctuate from

time to time according to supply and demand. The exchange rate system in a country which allows the fluctuations of foreign currencies according to supply and demand is described as the variable exchange rate system. It is noticed that in a country operating such a system, the exchange rate would not stem exclusively from the fluctuation in price levels between her and other countries, it could also stem from restrictions imposed on international trade, or from a deficiency in the balance of trade experienced by various countries for whatever reason. The variable exchange rate system would in some countries be legitimate, as is the case in Lebanon, where the government allows the fluctuation in exchange rates according to the daily fluctuations of supply and demand. In other countries, the variable exchange rate system could be illegal, but despite this, some transactions would take place between individuals, which include the purchase and the sale of currencies, or foreign accounts, at prices completely different from the official prices.

This is regarding the exchange, and the exchange rate throughout the world. The *Shari'ah* rule concerning exchange and the exchange rate is as follows: The Islamic State operates the gold standard, regardless of whether she uses the metallic, or paper money standard (which would have gold and silver backing equal to its nominal value), and regardless of whether she adopted a specific fixed distinct feature or not for the metallic money. She is obliged to abide by this standard because it is a *Shari'ah* rule upon which many *Shari'ah* rules depend. Exchange between two units of the same type within the Islamic State must be equal, and it would be forbidden to have a disparity. Likewise, exchange between two currencies of the same type would follow exactly the same rule outside the Islamic State. The *Shari'ah* rule is one and does not change. As for the exchange between two different standards, it is permitted to have equality as well as disparity, such as with the exchange between gold and silver, on condition that the hand-over takes place on the spot i.e. "hand to hand" in gold and in silver. There is no difference here between the transactions of exchange undertaken at home or abroad, because the *Shari'ah* rule is the same and does not change. Just as disparity in the exchange between gold and silver (on the spot), would be allowed at home, so would exchange between them be allowed abroad. The same rule would apply in the exchange between the Islamic State's currency and other countries' currencies for both metallic money and the intrinsic paper money i.e. the money that is backed by an amount of gold and silver exactly equal

to its nominal value. Disparity in these transactions would be permitted if the standards were different, only on condition that the hand-over is on the spot in gold and silver. However, disparity would not be permitted when the currencies are of the same standard. Equality must be observed, for disparity in this case would be *Riba* and that is forbidden from a *Shari'ah* viewpoint.

As for fiduciary paper money, which is partially backed i.e. with a reserve that is less than its nominal value, the monetary value of this currency would be considered only up to the amount of reserves it holds. It would be exchanged against the Islamic State's currency on this basis. Consequently, this currency would be valued on this basis and according to such valuation it follows the same *Shari'ah* rule as that applies to the exchange between gold and silver metallic money, with only the value of the reserve considered when evaluating the exchange.

As for non-exchangeable paper money, which does not act as a substitute for either gold nor silver, nor is it backed by gold or silver, its rule according to *Shari'ah* would be the same as that of the two currencies of different types. Therefore, it is permitted to have in such transactions both equality and disparity, but they must be traded on the spot.

Therefore, exchange between the Islamic State's currency and the currencies of other countries is allowed, just like the exchange between her local currency. It is also permitted for the exchange to include a disparity because they are of two different standards, on condition that the hand-over is on the spot ("hand to hand") as far as gold and silver are concerned.

The ratio between gold and silver, or the exchange rate between them would not be totally stable. It would rather fluctuate according to the gold and silver market prices, with no difference between the local or the foreign exchange. The same would apply to the Islamic State's currency and the currencies of other countries; i.e. it would be permitted for the exchange rate between them to fluctuate. However, the exchange rate between the Islamic State's currency and the currencies of other countries would not have an effect upon the Islamic State for two reasons:

1. The Islamic lands possess all the raw materials that the *Ummah* and the State need. Therefore, her need for other countries' commodities would not be essential or necessary. She is self-sufficient of her local goods, thus not affected by exchange fluctuations.

2. The Islamic lands possess commodities which all other countries need, for example oil. The Islamic State could restrict the sale of such commodities unless they are paid for by gold. The State could do away with other countries' commodities by relying solely on her own local commodities, and who ever owns commodities that all other peoples need, could not in any way be affected by the fluctuation of the exchange rate. It is she who could control international markets, with none able to control her currency.

25
Foreign Trade

Since trade transactions moved from the bartering of commodities to using money as a medium of exchange, business between individuals flourished and grew. Work became more specialised at an individual level, at a national level as well as internationally. This marked the end of an era when the individual used to live by himself. It also marked the end of the era when generations in each nation or people lived within a nation in isolation from other nations and peoples, and domestic and foreign trade have therefore become one of life's necessities world-wide.

There is a difference between domestic and foreign trade. Domestic trade represents the trade transactions which are undertaken by individuals belonging to a particular nation. This type of transaction should follow the rules of trade mentioned by the jurists. It does not require any initiation from the State, nor does it require direct supervision, but rather a general supervision aimed at enjoining the trade rules of Islam upon people and punishing those who violate these rules, just like any other transaction, such as hiring, marriage etc. Foreign trade reflects the trade transactions undertaken between peoples and nations, not between individuals of the same State, whether this was between two states or between two individuals who each belong to different states and where each is buying commodities with the aim of transferring them to his own country. All such transactions form part of the rules governing the relationship of one country with another.

Therefore, the State would undertake export sanctions on certain domestic goods and allow others, and would also licence all traders whether belligerent or under covenant. So, the State controls all aspects of trade and the issue of all foreign traders. As for her citizens, it would be sufficient to supervise them in their foreign trading just like she would do in their domestic trading, for the rules governing their actions fall

under those of the domestic relations.

Foreign trade between states used to be conducted through individual traders. A trader would travel to another country, buy a commodity and transfer it back to his country, or he might take a commodity to another country to sell it and bring the money or another commodity back to his country. In all such cases, it is the State who would organise the aspects of this trade and directly monitor it. She would have control centres at the frontiers, these centres are referred to by the jurists as *Masalih*. The *Khalifah* should have these control centres (*Masalih*) on all the routes which give access to non-Muslim countries. People manning these centres would check all the traders. The centres would therefore directly control the imports and exports i.e. control all the traders, buyers and sellers alike. These control centres at the frontiers organise trade i.e. control directly the movements of traders and the currencies being brought into the State or taken out via her frontiers.

Since the *Shari'ah* rules are defined as being the speech of the Lawgiver related to the actions of the humans, the *Shari'ah* rules related to foreign trade have been revealed with regard to individuals, and the *Shari'ah* rules on wealth are related to wealth as far as its individual owners are concerned. Therefore, the rules of trade are connected to the traders not to the type of wealth. Accordingly, the rules related to foreign trade are in fact rules related to individuals from a *Shar'a* viewpoint concerning them and their wealth i.e. concerning the rule of Allah ﷻ on them and the rule of Allah ﷻ on the wealth they own.

Therefore, the *Shar'a* rules concerning foreign trade are not related to the traded material nor to its place of origin, but to the trader, because the rules concerning wealth follow the owner of wealth, accordingly they apply to both. Therefore, any rule which relates to the owner would automatically relate to the wealth he owns. This would be in contrast to the capitalist system, where the rules of foreign trade pertain to the wealth and not to the owner, so, it is the place of origin of the wealth that matters rather than the trader himself.

This is the difference between the capitalist viewpoint and the Islamic viewpoint. Since the capitalist system considers the wealth according to its place of origin, it gives a verdict on the origin. Islam, considers the

owner of the wealth i.e. the trader, regardless of the origin of the wealth. Capitalism considers the wealth, whereas Islam considers the individual. It is true that the wealth with which one trades would have an effect when judging whether the trade is permitted or forbidden, but this is connected to the description of the wealth, insofar as to whether it is harmful or beneficial, not regarding the origin of the wealth. Therefore, the rule is connected to the individuals who own the trade or the business i.e. the trader, and not the trade. The traders who enter or leave the Islamic State are of three types. They are either citizens of the State, whether Muslims or *Dhimmi*es, those under treaty or belligerent (i.e. *Harbi*).

As for the traders who are citizens of the Islamic State, they would be forbidden from exporting to the belligerent countries any commodity which may assist or aid the enemy's war effort, such as weapons. In other words, they would be forbidden from exporting any strategic materials, which are effectively used in war, from the Islamic State, for this would mean supplying the enemies and helping them in their fight against the Muslims. This would be considered a co-operation on sin, because it would be a co-operation with the belligerent against the Muslims. Allah ﷻ says:

وَلا تَعَاوَنُوا عَلَى الإِثْمِ

"And do not cooperate in sin" [Al-Ma'idah: 2]

Therefore, no person, Muslim or *Dhimmi* alike, would be allowed to export such commodities from the Islamic State where the exporting of such commodities would assist the belligerent disbelievers in their war against the Muslims. However, if it does not assist them against the Muslims, exporting to them would be allowed. As for the export of other commodities such as clothing and foodstuffs or any such commodity, this is permitted because the Messenger of Allah ﷺ ordered Thamama to supply the people of Makkah with provisions while they were belligerent enemies to him, and because assisting the enemies in their war effort did not apply in such areas. Also, because Muslim businessmen used to travel to the belligerent countries to trade with them in the times of the *Sahaba*, in their presence and with their full knowledge. The *Sahaba* did not object

nor did they condemn such actions, despite the fact that they would not have been expected to keep silent over such an action had it been unlawful. Therefore, their silence over this, with their full knowledge of it, could only be considered as a silent consensus. The Muslim and the *Dhimmi* traders would therefore be allowed to export foodstuffs and goods, unless these are needed by the community due to their shortage, in which case their export would not be allowed.

This is as far as the trade with the belligerent country who is not effectively at war with the Islamic State, is concerned. However, if the belligerent country were that of an actual belligerent enemy, such as Israel for instance, trade with such a country is categorically forbidden, whether in weapons, food or any other commodity, because this would help the enemy to resist against the Muslims and it would become a co-operation with them in sin and in aggression, and is thus prohibited.

This would be as far as exports outside the Islamic State were concerned. As for the imports, Allah ﷻ says:

وَأَحَلَّ اللَّهُ الْبَيْعَ

"And Allah has permitted trade" [Al-Baqarah: 275]

This verse is general comprising domestic trade and foreign trade. There is no other *Shari'ah* text preventing the Muslim or the *Dhimmi* from importing wealth into the country. Therefore, the verse would remain in its generality, and accordingly it would be permitted for the Muslim to import into the country any type of commodity, and he would not be forbidden from importing any commodity which the Muslim or any person is allowed to possess, without restrictions.

As for the traders under covenant (with the State), they would be treated in accordance with the foreign trade clauses of the treaty which the State has signed with them, whether in imports or exports. However, they would not be allowed to purchase any weapons or any other military hardware that may be used in the war effort. If they bought such commodities, they would be prevented from exporting them abroad, for this would assist them, and although they are traders under covenant,

this would not alter the fact that they could one day become belligerent enemies. Any other commodity, which is not deemed an aid in their war effort, is allowed to be exported. Furthermore, if it were in the Muslims' interest to supply them with certain weapons, those considered non-effective and which do not reach the level of military assistance, they would also be allowed to be exported. This is because the *Shari'ah* reason (*Illah*) for prohibiting the sale of weapons or any other military hardware, used as war aid, is to prevent the supply and help of the enemy. Therefore, if the reason vanishes, the rule would not apply.

As for the warring belligerent, they are those with whom the State has no treaty and they are not citizens of the Islamic State, regardless of whether there is combat between them and the State or not. In the view of Muslims they would be considered as warring belligerent. If the state of war between us and them effectively existed, they would be considered just like any enemy we happen to meet on the battlefield. We would take their prisoners, slay anyone we overpower unless he had been given protection, and seize their properties. If the war did not effectively exist, none of this would be violable except for the one who enters our land without protection, whether he or his property entered; he would be treated as a warring belligerent, as would his wealth. It would be on this basis that the warring belligerent traders, buyers and sellers alike, would be treated. The *Shari'ah* rule on this could be summarised as follows:

A warring belligerent could not enter the Islamic household unless he is given protection i.e. a special entry visa. Giving him protection means a permission to enter. If he entered without protection it has to be examined. If he entered with commodities to sell in the Islamic land, and the State's common practice happened to allow traders to enter without protection, they would not be harmed, but their commodities would be subjected to the same restrictions and levies imposed on all foreign commodities, these would be based on what they impose on our traders; in other words, they would be treated the same way they treat our traders. Those who enter would be allowed to trade according to the common practices, as is the case for instance with those who live near the State's frontiers. These traders would be allowed to enter without an entry visa i.e. without protection. However, if there were no prior common practice allowing them to enter as traders, or such common practice were in force but a person happened to enter with no intention

to trade, he would be treated like the non-trading warring belligerent, and his blood and his wealth would not be protected within the State's territories. If he claimed to have come seeking protection, this would not be accepted of him. This is because giving protection to the belligerent is a condition for him to deserve the safeguarding of his blood and wealth in our land, so if he were not given protection, the State would not be responsible for his safety. Protection would be given based on the common practice in force concerning and exclusively for the traders, provided they were carrying goods they intended for trade. Giving the belligerent protection would also entail protecting his wealth. If he decided to settle in the Islamic State and were given the right of abode, then he decided to leave to the belligerent country, leaving his wealth behind for a Muslim or for a *Dhimmi* to look after, or lending it to either of them, it would in this case have to be examined as to the reasons why he left. If he left for personal reasons, or as a trader, an envoy, a tourist or for a pressing matter, and returned to the Islamic land, then the protection he had been given to his person and his wealth would remain in force. This is because if he left to the belligerent country, but with the intention to remain as a resident of the Islamic State, he would be treated like the *Dhimmi* who leaves to the belligerent country, therefore the same rule would apply to both. His leave to the belligerent country would not nullify his protection as long as his intention is to reside in the Islamic land. However, if he returned to the belligerent country as a resident, his protection for himself would be nullified, and if he wished to return to the Islamic land, he would require a new application for protection. As for the protection given to his wealth, this has to be examined. If he had left it behind in the Islamic land, by leaving it in the care of a Muslim or a *Dhimmi*, then his wealth would remain protected. This is because once he had reached the Islamic land and was given protection, this protection would cover both his person and his wealth. If his wealth was left behind and he returned by himself to the belligerent country, the protection given to him would be nullified once he reached the belligerent country, but the protection given to his wealth would remain valid for that which he had left in the Islamic land, due to the fact that the nullifying factor would be restricted to his person only. So if he died, his wealth would be transferred to his inheritors; because the protection is a binding duty related to the wealth. Therefore, if this wealth was transferred to his heirs, so too should the right to protection be given to his heirs. However, if he took his wealth with him, he would lose the protection given to

both himself and to his wealth.

Therefore, the trading commodities of the belligerent should not enter our land without a protection given to the owner, and his protection extends to the protection of his trade. If the belligerent wanted to bring his trading commodities in without however entering himself, a protection to his trading commodities may or may not be given, because in this case the protection which may be given to the commodities could be separated from the protection given to his person. For if the belligerent person entered our land, and he were given protection for himself, this protection would automatically be extended to his commodities which he brings with him, but not to the wealth he didn't bring with him to the Islamic land. If he departed the Islamic land and left his commodities behind in the Islamic land, the protection given to his commodities would remain in force within the Islamic land, and the protection he had been given to himself would be terminated. Therefore, it would be permitted for the *Khalifah* to give protection to the trading commodities of the belligerent i.e. to his commodities, if this wealth were to reach the Islamic household without its owner. If protection to his wealth i.e. trading commodities was granted, he would be allowed to transport this trade with an agent, an employee or otherwise. This indicates that for the wealth of the belligerent to enter the Islamic land, it would require protection, just like the entry of the belligerent person. Therefore, foreign trade requires protection for it to enter the Islamic land i.e. it requires a permit from the State. If a permit were given, then the State would have to protect this wealth just like any other wealth belonging to her citizens. If it entered without protection i.e. without a permit, it would be a violable property which the State could seize. However, this would only occur if the commodities were the property of the belligerent traders. Whereas, if these commodities were purchased by a trader who happened to be a citizen of the Islamic State, whether Muslim or *Dhimmi*, and he wanted to import the goods to the Islamic State, he would not in this case require a permit. This would be on condition that the commodities happened to be his property, and that the transfer of ownership had been completed in all its aspects. For if the transfer of ownership were not yet completed, because the sale deal was not completed, but just happened to be in process, as is the case in most business deals at present, where for instance the buyer would not be committed to the sale until he receives the shipping documents, or where

the goods are yet to be received although they had already been bought, these goods would in this case be considered the trading commodities of a belligerent, and their entry to the Islamic land would require protection i.e. a permit. If the receipt of goods took effect once they have left the factory or the warehouse, or once they have been shipped, then the goods would be considered as being the trading property of the Muslim or the *Dhimmi*. However, if the handover did not take effect until the goods reached their destination, in this case they would be considered as the property of a belligerent.

This is as far as the trade of the belligerent and the entry of the belligerent are concerned. As for the exit of the belligerent's trade out of our land i.e. the purchase by the belligerent of our local goods, this has to be examined: if the goods were of a strategic nature, such as weaponry or any other war aid that may be used in the war against the enemy, he would be prevented from purchasing such commodities, and if he had already purchased them, he would be prevented from exporting them. As for other types of commodities such as foodstuffs, consumables and others, the belligerent who had been given protection would be allowed to purchase, transport and export such commodities from our land, as long as these are not among the necessities of the citizens because of their scarcity, in which case an export ban would apply due to the citizens' need for them. The Muslim and the *Dhimmi* traders would also be prevented from exporting such commodities, the *Shari'ah* reason (*Illah*) being the need of the citizens for such commodities.

This is as far as the movements of traders and trading commodities in and out of the Islamic land are concerned. As for the levies imposed on these commodities, the *Shari'ah* rule varies according to the traders, and not according to the types of trading commodities. Because Islam does not view the trading commodities as being merely a property, nor does it view them in relation to their origin, but rather to the fact that the trading commodities are owned by individuals. Therefore, levies imposed on the trading commodities would depend on the traders themselves, regardless of the origin of goods and regardless of their type. Therefore, if the trader were a citizen of the Islamic State, Muslim or *Dhimmi* alike, no *'Ushr* customs would be imposed on his business whatsoever. This is because Ad-Darimi, Ahmed and Abu 'Ubayd reported on the authority of 'Uqbah ibn 'Amir that he heard the Messenger of Allah ﷺ say: **"He who imposes maks (custom duty) would not enter paradise."** Abu Mohammed said: "He ﷺ means the *'Ushr* customs, and the one who collects the tithe on imported commodities". Muslim bin Musbih reported that he once asked Ibn 'Umar: "Did you know that Umar took from the Muslims the tithe?" He said: "No, I did not". Ibrahim Ibn Muhajir reported: "I heard Ziyad Ibn Hadeer say: 'I was the first to collect the tithe in Islam'. I asked: "Whom did you use to levy the tithe?" He replied: 'We never used to levy the tithe on a Muslim or a covenantor (*Dhimmi*); we collected the tithe from the Christians of Bani Taghlib.' 'Abdurrahman Ibn Ma'qal reported: "I asked Ziyad Ibn Hadeer: Whom did you use to levy? He replied: 'We never used to levy a Muslim or a covenantor.' So I said: "then whom did you levy?" He replied: 'The belligerent traders, for they used to levy us when we went to them on business.' Ya'aqub Ibn 'Abdurrahman Al-Qarri reported on the authority of his father who said: 'Umar Ibn Abdul-Aziz wrote to 'Uday Ibn Arta'ah the following: "Remove from people the burden of *Fidya* (redemption), the burden of having to provide food as atonement, and also remove the burden of *Maks* i.e. customs. Indeed, it is not customs duty but the withholding of people's due, in which Allah ﷻ says:

وَلا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلا تَعْثَوْا فِي الأَرْضِ مُفْسِدِينَ

"And withhold not the things which are people's due and commit no evil on earth with intent of being mischievous" [Hud: 85]

...he who brings to you charity (*Sadaqah*), accept it from him; and he who does not, Allah would then adequately account him. Kariz Ibn Sulayman said: "Umar Ibn Abdul-Aziz wrote to 'Abdullah Ibn 'Awf Al-Qarri the following: "Ride to the house which is in Refah called the house of *Maks*, demolish it, then take it to the sea and throw it in, leaving no trace of it." Abu 'Ubayd reported these five narrations in the book of *Al-Amwal*. Abu Ubayd said: "The meaning of these reports in which we mentioned the ushr, the dislike of customs duty and the harsh warning against it, has its roots in the days of ignorance (*Jahiliyya*), when it was the practice of Arab and non-Arab kings to impose upon the traders 'a tithe' of their properties if they happened to pass by their lands. This is illustrated in the letters dispatched by the Messenger of Allah ﷺ to other provinces such as Thaqeef, Bahrain, Doomat al-Jandal and others among

those who embraced Islam, in which he ﷺ wrote: **"That they should not be pressed nor should they be levied on."** Therefore, we gathered from this that it was a customary practice of the days of ignorance (with many tales about it reaching us) until Allah ﷻ abolished this practice when He ﷻ sent His Messenger ﷺ with Islam" i.e. it was the customary practice of the days of ignorance to impose the tithes i.e. customs duties (*Mukus*), so Allah ﷻ abolished this by Islam.

This reported *Hadith* of the Messenger of Allah ﷺ, as well as the reports from 'Umar ibn al-Khattab and 'Umar Ibn Abdul-Aziz, indicate that no customs duty should be taken from the Muslim or the *Dhimmi* on their trading commodities, be they imports into the Islamic land or exports to the belligerent household. Umar ibn al-Khattab adhered to this and never took customs duty from the Muslim and *Dhimmi* traders, and the *Sahaba*h approved of this, therefore it indicates silent consensus i.e. a *Shari'ah* evidence. The customs duty is the money taken on the trading commodities which pass through the State's frontiers either in or out of the country. The house erected on the frontiers for this purpose is called *Bait ul-Maks*. The customs duty on goods is either money that was taken in the days of ignorance from the salesmen in the markets, or specific items taken by the State's officials upon the sale of commodities, or upon their entry into the cities. The plural of customs duty is *Mukus*. It is said: *Makasa* i.e. he collected the money of customs duty. Therefore, it is specifically applied to the levy taken on trade. The prohibition of taking the customs duty is general, comprising the Muslim and the *Dhimmi*.

As for the *Hadith* reported by Abu 'Ubayd in *Al-Amwal*, on the authority of Harb Al-Thaqafi on that of his maternal grand-father that the Messenger of Allah ﷺ said: **"No tithe (ushr) should be imposed upon the Muslims, but they should be imposed upon the Jews and the Christians."** This *Hadith* has been reported through three chains, two of which narration was made from an unknown, and the narration of Harb Ibn 'Ubaydullah Al-Thaqafi, which he reported on the authority of his maternal grandfather, on which the *Hadith* narrators did not comment on and remained silent about. Besides, none of the scholars (*Mujtahideen*) adopted it, and no reports whatsoever reached us stating that someone has used it as evidence, whether from among those who say that nothing should be taken on the trade, or from those who say that a quarter of the tithe should be imposed upon the Muslim's trade as *Zakat*

and half of the tithe on the *Dhimmi* as a political responsibility. If the report had been confirmed as being sound, it would have surely been adopted and used as evidence. So the *Hadith* has not been judged to be sound by anyone, and thus must not be used.

As for what has been reported that 'Umar used to take a quarter of the *'Ushr* (tithe) from the Muslims and, the from *Dhimmi*es half of the *'Ushr* (tithe) and from the belligerent the *'Ushr* (tithe), this should be linked to the rule concerning purchase and sale transactions undertaken by the Muslim, the *Dhimmi* and the belligerent. As for the Muslim and the *Dhimmi*, the *Ahadith* have been explicit about the prohibition of imposing anything upon them when they stated in general terms, the prohibition of *Maks*, which is the taking of *'Ushr* on trade. Therefore, what 'Umar had taken from the Muslim would have been *Zakat*, and what he had taken from the belligerent would have been based on reciprocity, for they used to impose the *'Ushr* (tithe) on our traders, and what he had taken from the *Dhimmi* would have been in accordance to what he had agreed with them as a peace settlement. What he had therefore taken from the *Dhimmi*es would have been within the remit of the peace treaty, and not a *Maks*, because Allah ﷻ has only imposed the *Jizya* on the disbelievers. Therefore, if half of the *'Ushr* (tithe) were taken from them, within the terms of the peace treaty, together with the *Jizya*, it would then be a correct and sound treaty. Otherwise, it would be unlawful to take anything from their wealth once the treaty of the *Dhimma* has been soundly concluded with the *Jizya* and the submission, and as long as they did not violate the treaty. Abu 'Ubayd said: "What I found difficult to perceive was his taking (meaning 'Umar) from the people of the *Dhimma* (half-tithe), so I kept saying: They are not Muslims in order to take from them *Sadaqah* (*Zakat*), nor are they belligerent in order for us to treat them with reciprocation. So I did not realise what it was until I studied one of his reports, so I found that he had struck a peace deal with them on this basis (i.e. to pay half an *'Ushr* (tithe), in addition to the *Jizya* (poll tax) and the *Kharaj* (land tax) of the two lands."

This is as far as the Muslim and the *Dhimmi* traders are concerned. As for the trader under treaty, he would be levied according to the text of the treaty concluded between them and us. If the treaty had stated that he should be exempted, he would then be exempted, and if it stated that a certain sum must be imposed, it would then be collected from him, thus

implementing upon him what the treaty had stipulated.

As for the belligerent trader, the *Shari'ah* rule is to impose upon him the same levy imposed by his country upon the State's traders. So if a belligerent trader entered the State's land with protection, the State would impose upon him what is imposed upon the traders of the Islamic State, whether they were Muslims or *Dhimmi*, for Abu Qudamah mentioned in his book "Al-Mughni" that Abu Majlaz Laahiq Ibn Hameed said: "They said to 'Umar: 'How much should we take from the belligerent people if they came to our land?' He asked: 'How much do they take from you?' They said: 'The *'Ushr* (tithe).' He said: 'So take the same from them." 'Abu Ubayd reported in "*Al-Amwal*" that Ziyad Ibn Hadeer said: "We never used to levy *'Ushr* (tithe) on a Muslim or one under treaty. I asked: 'On whom did you use to levy *'Ushr* (tithe) on then?' He said: 'The traders from the belligerent people, just as they used to levy (the tithe) on us when we went to them with our trade.' 'Umar ibn al-Khattab did so in the presence of the *Sahaba*, and no *Sahabi* rebuked him for this"; they all kept silent and therefore it was a general consensus (*Ijma'a*). However, to impose on the belligerent traders a levy equal to that they impose on the State's traders is permitted, and not compulsory i.e. it would be at the State's prerogative, and not an obligation upon her to impose a levy. It would be permitted for the State to exempt the belligerent of the *Maks* (custom duty), or to impose a lower *Maks* than that imposed on it. However, the State is not allowed to impose a higher Maks than that imposed upon it. This is because imposing *Maks* is not designed for the collection of revenue, but is based on the principle of reciprocity. When adopting such a policy, the *Khalifah* would consider the interests of the Muslims. Abu 'Ubayd reported in "*Al-Amwal*" that Salim b. 'Abdullah ibn Umar reported on the authority of his father who said: " 'Umar used to impose half-tithe on oil or wheat brought in by the *Nabatean* traders, in order to encourage imports into Madinah, and he used to impose the tithe on textiles." The tithe was what they used to levy on our traders at the time. Therefore, the customs duty taken from the belligerent would depend on what the interests of the State entail. The customs duty could therefore either be imposed or waived; it could also be either high or low, provided that it does not exceed what the belligerents impose upon the State's traders.

The Reality of Foreign Trade

International trade yields a tremendous benefit due to the high real profits which are generated from it. What adds to a person's conviction about the importance of international trade is the ferocious fighting and fierce competition between the superpowers over the acquisition of new markets and the protection of old markets, to which their merchandise is disposed of, and from which they import raw materials without obstacle. International trade has a host of distinguishing features, merits and outcomes. The main reason behind the establishment of international trade is the disparity in the proportional costs of commodities between one country and another. It would therefore be in the interest of all countries to establish international trade between them once the proportional costs differed in each country.

Balance of Trade

The balance of trade is the difference in total value between the visible imports and the visible exports over a period. If we were to calculate the total value of the imports on one side and the total value of exports on the other, we would be able to work out the balance of trade. So if the value of our exports exceeded that of our imports, the balance of trade would, in this case, be in our favour, because other countries owe to the State the difference between the value of the exports and imports.

Therefore, foreign demand for the State's currency to pay for commodities from the State would exceed the State's demand for foreign currency to do the same. However, the balance of trade would not reflect the real picture about the state of the national economy. Because the national income is not only restricted to the profits from foreign trade. Other sources of income would also be considered as part of national income. The balance of trade does however reflect the real picture concerning the state of our foreign trade. It would however be unwise to aim to maintain the balance of trade tipped in favour of the State at all times. This is because the State may have other designs related to her ideology, or to the propagation of that ideology, or related to industrial development, or to fulfilling her needs, or to political issues concerning the stance of a country with whom she has trade relations and how she

aims to shape that stance. It could also be related to the international situation and what may influence it. In this context, the State's intended designs would override the need to achieve a favourable balance of trade.

Therefore, although the commercial perspective would be based on profit, it should at the same time be from the State's perspective, not from an individual's, thus the objective and the entity of the State should override any commercial gains.

Currency/Monetary Relations Between Countries

Foreign trade generates a monetary relationship between countries, because a country would have to pay the price of commodities with the currency of the country she had imported from, or with a currency acceptable to that country.

A country would also have to receive payment for commodities she sells in her own currency or in the currency of her choice. This is what generates a monetary relationship between various countries.

There is also the exchange of commodities or visible imports and exports. Additionally there is the exchange of services or what are known as invisible imports and exports, these include all types of transport, such as cargo and passenger transport, international shipping and air freight, postal charges, international telegraphic and telephone costs, all types of commercial services, and all the commissions and brokerage charges, as well as all services related to the tourist industry. When a tourist visits a foreign country, and spends some of his income there, he would also be taking some of his property with him. He would however, be taking from his country that which would enable him to spend in the country he is visiting, either by way of a prior arrangement to spend a specific amount of that country's currency, which his country would undertake to cover with her own currency, or an arrangement to spend a sum of a currency that is acceptable to that country, subject to the availability of such a currency in his country.

In order to pay for the cost of imports, we may either offer our local currency in order to buy foreign currency, or commodities may be offered

in foreign countries in order to obtain their currencies. The acquisition of foreign currency is therefore essential for the State in order to generate trade relationships, or economic relationships with other countries.

However, the state's currency should not be jeopardised by making it susceptible to instability, or by undermining its credibility, just for the sake of establishing trade or economic relationships. Rather our control over foreign economic relationships, whether these were trade relationships or otherwise, should be one of the fundamentals of these monetary relationships. This would facilitate the preservation of the state's currency and, at the same time, our acquisition of the foreign currencies that are needed. In order to help achieve such a policy, the State ought to avoid taking up short or long term loans, for these would be one of the matters that cause instability in it's currency market and may decrease the value of it's currency.

Foreign Trade Policy

Foreign trade is the relationship of the State with other states, peoples and nations from a commercial angle. In other words, it is the management of the *Ummah*'s commercial affairs from a foreign angle. This policy should be based on specific fundamentals, and it should adhere to. The nations' viewpoints about foreign trade vary according to the various viewpoints they hold about life, and each nation would therefore determine her relationships with foreign nations accordingly. A nation's viewpoint about foreign trade would also vary according to her viewpoint about her own economic interests, aimed at achieving economic gain.

We note therefore, that to the Socialists, the foreign trade relation is based on their Socialist viewpoint about developing the world. For, although they observe economic gains, they classify the commodities according to the countries they deal with. They would attempt to sell to Syria for instance, farming equipment, fertiliser, medicines, industrial equipment for manufacturing of consumable goods, such as cheese and clothing, as well as ploughing equipment and the like. This, in their view, would help the progress towards capitalism. If they imported any commodities, they would only import that which improves the

production, and that which they need, although this practice is at present, diminishing. This in fact is in contrast to the policies of the capitalist countries, such as Britain for instance, who always looks for material gain, placing the concept of expediency at the heart of her foreign trade policy. She would sell commodities to all peoples and nations as long as it achieves economic gain. As for the American policy of restricting trading with Russia and China to specific types of commodities and of a total ban on other types, this is not related to the viewpoint, rather to her war policy. This is because she considers these two countries potentially belligerent states, even though they are not effectively at war with her. Apart from this, the American trade policy is based on expediency.

However, western economists have held different viewpoints about foreign trade and as a result, various schools of thought have emerged, some of these are the following:

1. Free Trade

The theory of free trade states that trade transactions between countries should be conducted without restrictions, customs duties or any obstacle to imports. This school of thought champions the abolishment of the State's control. The State would no longer be obliged to control imports and exports, because the equilibrium between imports and exports would be achieved by natural forces. Therefore, the equilibrium would occur naturally and automatically.

This theory contradicts Islam, because foreign trade is one of the relations between the State and other states, peoples and nations. These relations are all controlled by the State and it is the State who would organise and directly supervise such relations, whether these were relations between individuals, or economic or trade relations. Therefore, it would be totally wrong to adopt the theory of free trade, for the Islamic State would prevent the export of certain commodities while permitting others. She would also handle the issue of the belligerent traders and the covenantors, though she would only supervise her citizens in their foreign trading the same way as in their local trading.

2. Protectionism

The protectionist theory requires that a State interferes in order to achieve equilibrium in foreign trade. The pupose of protectionism is to influence the balance of trade and redress the deficit, because the spontaneous balance between exports and imports would not be able to achieve equilibrium, nor would it be able to redress a deficit. Therefore, protectionism would be necessary, and that is why custom duties as well as export and import restrictions would be imposed.

This theory as it stands is limited, because it restricts the State's powers to interfere merely to achieve a foreign balance of trade or to redress the deficit. This would be wrong because the Islamic State interferes in order to deal with the other states with reciprocity, to provide the country's needs to generate monetary gains and foreign currencies and, most importantly, to carry the call for Islam. Therefore, it would be wrong to confine the interference of the State to achieving equilibrium in trade transaction and to redress the deficit. Rather, her interference should be for political, economic and commercial aims and for carrying the Islamic Message.

3. National Economy

The theory of national economy is linked to the concept of "cultural protection" derived from the theory of heavy industry. The champions of the theory of national economy deem that the economic growth of a nation must aim at providing her with political power as well as economic power. They deem that the growth of any country would undergo three stages: The pastoral/agricultural stage, the agricultural/industrial stage, then the agricultural/industrial trading stage. A country would not achieve real power unless she acquired a navy, colonies and populations with various skills. Furthermore it would be essential for the productive forces and economic growth to be in harmony, and this would serve as a fundamental condition of political power. They also deem that although international economic ties would benefit from free competition, this would depend on all competing countries reaching perfection in developing their powers; and in order to stimulate this development, industry must be protected. As for agriculture, it would not enjoy any protection and it would be permitted to export all kinds of produce

without restriction or conditions, and their prices would be set according to the free market. Therefore, the theory of national economy would be in essence industry orientated. It states that the nations who aim towards being powerful should be eager to pass the agricultural stage to industry, because in the agricultural country, a large size of the productive forces i.e. the workforce, as well as a considerable size of the natural resources i.e. the raw materials, would remain unemployed and unexploited. Therefore, in order to invest in the workforce and the natural resources, an industrial programme should be initiated alongside agriculture. A country who establishes her economy solely based on agriculture would not possess the economic capability and the standard of living which an agricultural/industrial based country would have. The theory of national economy necessitates the presence of industry alongside agriculture in order for the country to be able to stand on its own feet economically. Therefore, the concept of national economy in fact applies protectionist theory on industry, thus imposing the appropriate restrictions and tariffs exclusively on industrial imports and exports, whilst at the same time, it applies free trade theory on agriculture making it free of any trade restrictions.

Islam is averse to such a theory, because leaving the foreign agricultural trade free of control means that the State would not control the foreign trade of agricultural products. This is forbidden, for the State organises all agricultural, industrial, or any other commodity which enters or leaves the country; she could ban the export of some commodities, while permitting the export of others. She would deal directly with the issue of belligerent and traders under treaty, while opting to merely supervise her own citizens. As for the State's interference in industrial matters in accordance with the country's interest and in order to boost the economy, this would form part of her duty to manage the *Ummah*'s affairs and this is commanded by Islam. However, all this would be restricted with the interest of the *Da'wah* (campaigning for Islam), together with the industrial development, i.e. not just for industrial development. This demonstrates that, although the theory of national economy has, in parts of its industrial vision, identical aspects to those which are part of the management of the *Ummah*'s affairs that Islam approves of, such aspects contradict Islam because they are not linked to the interests of the *Da'awa* for Islam. Overall, the whole theory contradicts Islam due to the total freedom given to agriculture, therefore Muslims would not adopt such a

theory.

4. Policy of Self-Sufficiency

The policy of self-sufficiency means that a country aims towards being self-sufficient and to form a closed economic unit that could survive on its own. This country would not import nor export any commodities. Her aim would, in this instance, go beyond the protectionist theory, differ from the theory of national economy and contradict the free trade theory.

The theory of self-sufficiency which has been implemented between the last two world wars has been highlighted in two forms: Isolationist self-sufficiency and expansionist self-sufficiency. Nazi Germany represented a model of a country which adopted a self-sufficiency policy; it was, for her, a measure triggered by Germany's home and foreign policies, which no longer fitted with the rules of international trade.

Although the policy of self-sufficiency represented in fact a host of measures which had political aims, the champions of such policy deem that it represents a fundamental economic basis, which is summarised in the fact that a country who possesses raw materials, chemicals, machines and manpower, should be able to survive. The point at hand would be organisation. As for capital, this is secondary. It is the government which chooses for itself a political program, to which they submit the economic and financial management. In order for the policy of self-sufficiency to achieve its aim, which would be to render the local economy able to be self-sufficient, the government should be prepared to manage without many of it's needs; because the policy of self-sufficiency would make a country unable to fulfil all her needs. What is important for this policy is to be able to fulfil the basic needs of the individual, the nation and the State while relying exclusively on the local economy, in a manner that would set her in an upward trend. Therefore, the State which operates a policy of self-sufficiency in foreign trade would be obliged to annexe the countries she would need in order to acquire raw materials, markets, manpower, and experts etc. This annexation would either take the form of a direct merger, or that of commercial treaties. As for the abolition of economic frontiers, this would mean annexing the country i.e. abolishing the political borders, for it would be impossible to abolish economic borders without the abolishment of the political borders. If the State

could not annexe the countries that she needs in order to acquire the materials she lacks, she should in this case persevere without fulfilling some of her needs, while aiming to avoid a shortage of basic necessities, for in such a case she would not be able to persevere, whereas lacking non basic necessities could be afforded.

This is a summary of the isolationist and expansionist self-sufficiency policies. The isolationist is where the basic needs are available; whereas the expansionist policy, within a specific scope, is achieved by annexation or treaties in order to provide all the necessities, be they basic or luxuries. If one were to look closer at the policy of self-sufficiency, one would realise that it does not rise to the level of being a commercial or economic solution. It is merely a temporary preventive measure which the State would undertake against a potential foreign economic or commercial siege. Therefore, it is not a remedy for foreign relations, but a reactive measure that a country may undertake if she were subjected to a foreign economic or commercial embargo. Therefore it would form part of the styles and means and not the rules. It would therefore be wrong to ask what the *Shari'ah* rule is concerning this policy. It would also be wrong to say that it contradicts or differs from Islam, for it is merely a style that might be adopted. Therefore, this policy could be taken as a style if it were to have a practical reality i.e. if a country were under siege and it were possible to rely solely on the home economy to meet it's basic needs. This policy would not be adopted if it had no reality and it was impossible to be self-inefficient regarding the basic needs of the State, the *Ummah* and the individuals.

This policy is part of the management of affairs undertaken by the *Khalifah* and which *Shar'a* has allowed him to opt for, in whichever style he deems appropriate and in the interest of the Muslims.

Note: